



## SECTION SF 1449 CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
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0001	Stevedoring Services for Charleston and Savannah FFP - This is a FFP, Requirements Contract for Stevedoring and other Terminal Related Services for the 841st U.S. Army Transportation Battalion (Port of Charleston, South Carolina and Port of Savannah, Georgia. The period of performance is from 1 January 2003 through 31 December 2005.	1.00	Each		
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## Schedule Notes

**NO CHARGE ITEMS:**

Offerors must submit offers on all items enumerated in the Schedule of Rates for which estimated quantities are shown. If there is to be no charge for an item, an entry, such as "No Charge", the letters "N/C", or "0" must be made in the unit price column of the schedule. Caution: The Government anticipates requirements under each item for which estimated quantities are shown. The Government will determine the schedule and item under which services are ordered, consistent with the terms of the contract and prevailing practices of the port, and reserves the right to order services to provide the most economical performance for the Government. Services ordered under an item for which the contractor has offered "No Charge" for an item does not relieve the contractor from the requirement to provide the service or comply with other provisions of the contract, applicable law or regulation.

TECHNICAL INQUIRES: Mr. Denis Wengland (ACO) at

CONTRACTUAL INQUIRES: Mr. Quentin Blanchard (Contract Specialist) or James T. Hayes (Contracting Officer) at (703) 428-3305.

841<sup>st</sup> TB, Charleston, SC  
 DESCRIPTION/SPECIFICATION/STATEMENT OF WORK  
 841<sup>st</sup> TB, Charleston, SC

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## DESCRIPTION/SPECIFICATION/WORK STATEMENT

## 1.0 GENERAL

1.1. Scope. This contract covers the handling of Department of Defense sponsored export and import cargo at the MTMC 841st U.S. Army Transportation Battalion located on the Naval Weapons Station South, North Charleston, South Carolina. The operational area of responsibility shall cover the Charleston Naval Weapons Station, the Naval Weapons Station South, and all South Carolina State Port Authority facilities within the Greater Charleston area, and facilities of the Georgia Port Authority, Savannah State Docks (Garden City Terminal and Ocean Terminals). The Contractor, as directed by the Contracting Officer, must arrange for and provide stevedoring and related terminal services, including material and equipment incident thereto. The Contractor's duties, to be performed in accordance with the terms of the contract, shall include those duties hereinafter enumerated, to include the handling of ammunition/explosive cargo as required. Provisions relating specifically to work at Savannah, GA are set forth in Section 12, hereof.

1.1.1 The Government retains the right to perform stevedoring and related terminal services using military personnel, in lieu of using the contractor's services, in order to satisfy training requirements for military reserve units. During these training operations, the contractor, if requested, shall provide labor as required to support this operation. Such labor, when requested, must be compensated at the man-hour rates established in Schedule of Rates.

1.1.2. The Contractor's Duties are twofold:

1.1.2.1. The Contractor shall perform services associated with the operation of the functional activities enumerated in paragraph 1.1.3 below. He shall provide the necessary qualified labor force, equipment, and materials to accomplish those services for which the Contractor shall be paid at the applicable rates (see schedule of rates). Compensation for the handling of explosives or radioactive material of a type requiring a U.S. Coast Guard permit, must be in accordance with the man-hour differential rates in the Schedule of Rates, anytime that explosives are handled or present.

1.1.2.2. The Contractor must establish a cargo management system insuring the efficient movement and accountability of export and import cargo through the terminal. The Contractor will perform technical management services by providing a full time professional managerial staff to plan, organize, control and support the various functional operations to meet the minimum performance standards of the contract. Compensation will be included in the commodity rates.

1.1.2.3. The contractor must support Cargo Transporter Stuffing/Unstuffing Operations

1.1.3. Hours of Operation.

1.1.3.1. Working hours for the 841st MPC, North Charleston, SC are 8:00 AM to 12 Noon and 1:00 PM to 5:00 PM, Monday through Friday, excluding federal holidays, unless otherwise specified by the Contracting Officer.

1.1.4 Government personnel will be and are hereby-authorized access to the Contractor's facilities. In all such cases the Contractor will be notified of entry and the circumstances requiring entry at the earliest practicable time.

1.1.4.1. Major Activities Management. The Contractor must manage:

1.1.4.1. Terminal Operations, which acts as a receiving activity for export and import (retrograde) cargo including dangerous and hazardous cargo.

1.1.4.2. Railcar and Truck Unloading and Loading Operations.

#### 1.1.4.3. Container Stuffing/Unstuffing Operations.

#### 1.1.4.4. Vessel Operations.

### 1.2. Safety.

1.2.1. The Contractor must comply with applicable international, federal, state, local, installation and 841st U.S. Army Transportation Battalion MPC safety and fire regulations. The Contractor must establish and maintain an effective and comprehensive safety program. The Contractor must acquire, maintain, and require the use of safety equipment, personnel protective equipment and devices necessary to protect employees on the installation.

1.2.2. All motor and tracked vehicles operated by the Contractor personnel under this contract must strictly abide by posted speed limits and traffic laws that govern the operation of vehicles at the Naval Weapons Station, South Annex, North Charleston, SC, or as directed by the Contracting Officer.

1.2.2.1. Contractor personnel operating Government owned Material Handling Equipment (MHE) vehicles assigned to 841st U.S. Army Transportation Battalion MPC must possess a Valid Training Certificate. Contractor personnel operating intransit Government responsibility vehicles must possess a valid state drivers license, except when driving specialized equipment, (e.g. tracked, tanks,) then a valid Government permit, U. S. Government Motor Vehicle Operators Identification Card, OF 346, or a certified training course of familiarization, is also required.

1.2.3. The Contractor must conduct safety briefings for all of his workers at each shift change and must brief new workers as any new labor is added. Reimbursement for the briefings will be included in the cargo commodity rates.

1.2.3.1. The Contractor must immediately notify the Contracting Officer in the event of an accident or injury. Contractor must furnish the Contracting Officer a written report, DA Form 285, US Army Accident Investigation Report, (TE-2) within 24 hours of each incident resulting in an injury or death of personnel or damage to property while performing under the contract. If an investigation of the incident is conducted by the Government, Contractor must secure the accident scene, wreckage and impound pertinent maintenance and training records until released by the Contracting Officer.

1.2.3.2. The Contractor must assign a sequential control number to each DA Form 285. In assigning sequential control numbers, there shall be no distinction between damage to property or injury to personnel.

#### 1.2.4. Injury and Property Damage Reports.

1.2.5. The Contractor will actively participate in the 841st Safety Council. The Contractor attendance at safety meetings is mandatory.

### 1.3. Security.

#### 1.3.1. Cargo Security.

1.3.1.1. The Contractor is responsible for the security and accountability of all Government cargo under his control. The Contractor is responsible for cargo entrusted to his care and must exercise reasonable custody and control pursuant to the terms of this contract. The Contractor is be responsible for protecting cargo from loss or damage while in his custody.

1.3.1.2. If the Government, for certain cargo or equipment, requires extraordinary care beyond the normal security required by 1.3.1.1 and other provisions of this contract, the Contracting Officer will arrange for the required security.

#### 1.3.2. Classified and Protected Cargo.

1.3.2.1. The Government will provide the Contractor with notice of any inbound shipments and will provide the Contractor with specific guidance for the handling, staging, storage, monitoring, reporting, that may be required beyond the normal general cargo procedures. The Contractor must immediately notify the Contracting Officer of the arrival of any unscheduled classified/protected cargo shipments.

#### 1.3.3. Damage and Loss Reports.

1.3.3.1. When cargo, ships, inland cargo conveyances, ship equipment, or Government property is damaged, lost or pilfered while in the care, custody or possession of the Contractor or through handling by the Contractor's employees, agents or subcontractors, a full report of the facts and the extent of such damage or loss must be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence or its discovery, using the Cargo Discrepancy Report, MTDC-C 48-R (TE-3).

#### 1.3.4. Terminal Security.

1.3.4.1. Permanent personnel hired directly or indirectly by the Contractor for work to be performed under the contract must have in their possession and display, when required, a current identification badge issued by the Security Officer. Personnel must comply with installation security regulations. Personnel not complying with these requirements shall not be allowed in the terminal areas. Contractor personnel must register privately owned vehicles (POV) in accordance with the Naval Weapons Station Instructions.

##### 1.3.4.2. The Contractor must:

1.3.4.2.1. Be solely responsible for maintaining accountability, control, and custody of keys for locked areas, IAW AR 190-51.

1.3.4.2.2. Be solely responsible for locking and unlocking, at the beginning and end of the Contractor's work day, those buildings and/or storage areas under his control.

1.3.4.2.3. Take such precautions as necessary to maintain building/area security consistent with operational requirements.

1.3.4.2.4. Report immediately to the Contracting Officer any situation that might pose a risk to the security of Government property.

1.3.4.3. If the Government notices any building or area, under the Contractor's control, to be in an unsecured state, the Government will immediately notify the Contractor of such. The Contractor must secure the area within two hours.

#### 1.4. Required Contractor's Quality Control Inspection Program.

1.4.1. As part of his proposal the Contractor must submit in writing, for approval by the Contracting Officer, a Quality Control Inspection Program outlining an inspection system covering the services identified in the Performance Requirements Summary. The program must specify areas to be inspected on either a scheduled or unscheduled basis. Frequency shall be stated in terms of weekly, monthly. As a minimum, the program must include, but not be limited to the following:

1.4.1.1. Method(s) of identifying deficiencies in the quality of services performed before the level of performance becomes unacceptable.

1.4.1.2. Documentation of corrective and preventive actions taken.

1.4.1.3. Recommendations to eliminate and/or reduce factors contributing to deficiencies.

1.4.1.4. The Contractor must report the results of the inspection to the Contracting Officer on a monthly basis.

### 1.5. Joint Physical Inventory(s).

1.5.1. General. At the direction of the Contracting Officer, and not less than annually, the Contractor must furnish the required labor to inventory all facilities and equipment under his control. At least 24 hours advance notice of the inventory will be given the Contractor.

### 1.5.2. Initial Inventory.

1.5.2.1. The Contractor, without additional compensation, must participate with the Contracting Officer and predecessor Contractor (if applicable) in a joint wall-to-wall inventory of all Government facilities, equipment and property for which the Contractor assumes responsibility. These areas include vehicle staging areas, outside storage and warehouse areas. At least 24 hours advance notice of the inventory will be given the Contractor.

1.5.2. When the Contractor assumes security and accountability and joint inventories have been completed (or as they are completed with respect to a specific warehouse area), representatives of the Contractor and the Government will witness the rekeying or replacement of locks and/or application of such hasps, bolts or other locking devices, as the Contractor deems necessary to secure the facility. The cost of locking devices, locksmith(s), welders and general labor shall be reimbursed as a one-time out-of-pocket cost.

1.5.3. Periodic Cargo Inventory Procedures. Inventory shall be conducted on a semi-annual basis at the discretion of the Contracting Officer. At least 24 hours advance notice of the inventory will be given to the Contractor.

1.5.4. Final Inventory. At the completion of the contract, or prior to contract completion, as designated by the Contracting Officer, the Contractor will furnish the necessary labor to conduct a joint inventory of all facilities, equipment and property for which the Contractor has been responsible so that a final reconciliation can be made pending contract completion.

## 2.0 DEFINITIONS AND ACRONYMS (See Glossary, Attachment 2)

## 3.0 GOVERNMENT FURNISHED FACILITIES, SUPPLIES, AND EQUIPMENT

3.1. General. All GFE used by the Contractor will be hand receipted from Cargo operations Division. The equipment, facilities and supplies to be furnished by the Government for the Contractor use during the performance of the contract are specified in 3.2. through 3.2.4. below.

### 3.2. Facilities and Equipment.

#### 3.2.1. The Government will furnish:

3.2.1.2. Space for offices, gear room, and first aid room necessary for the performance of the contract will be located in Bldg. 3838 or other designated location (Charleston).

3.2.1.3. Two computer systems, including printer, with command standard software. DoD guidelines for the use of this equipment will apply.

3.2.1.4. Heavy lift equipment for ship operations including floating crane, gantry crane, mobile dock and tractor cranes with crews, lumber carriers, tugs and barges, provided that such equipment shall not be used when, in the opinion of the Contracting Officer, the ship's equipment can be used satisfactorily. When working with Government equipment, manned by Government personnel, the Contractor shall in no way be deemed to be an agent of the Government. Further, if the Government does not provide the aforementioned equipment, and direction has been provided by the Contracting Officer or his representative, it shall be furnished by the Contractor who shall be compensated at the equipment rental rates set forth in the contract or at out-of-pocket costs, as applicable.

3.2.1.5. Bridge Plates for rail operations.



3.2.1. Prior to making any change, which requires altering the existing structures, the Contractor must submit plans for approval to the Contracting Officer. All costs shall be at the Contractor's expense. Upon completion of the contract, the Contractor will be responsible for returning the premises and facilities to substantially the same condition as that at time of contract award if directed by the Contracting Officer otherwise modifications will remain in place and become the property of the U.S. Government.

3.2.2. The Contractor will not use Government equipment or cargo as Government Furnished Equipment (GFE) except as on a case-by-case basis and only when approved in advance by the Contracting Officer.

3.2.3. All M830 tow tractors, vessel Kalmar, track-mobiles provided as GFE will be re-fueled daily after each operation by the contractor.

### 3.3. GOVERNMENT FURNISHED SUPPLIES/SERVICES.

#### 3.3.1. Lumber, Dunnage, Lashing and Securing Materials.

3.3.1.1. All lashing gear, blocking and bracing material, or lumber removed from ships belongs to the Government and must be segregated by major type and removed to assigned areas.

3.3.2. Blank Government forms required for operations (see Technical Exhibits, TE-12 through TE-20).

3.3.3. Utility Services. This excludes commercial telephone service and electricity used to recharge the Contractor's equipment.

3.3.4. Containers in which to accumulate debris and refuse generated by the Contractor operations to include pickup and disposal of the material.

3.3.5. Seals for cargo transporters, tanks and railcars, locking wire and wire-twisting tools for railcars as required.

3.3.6. Managerial information as follows:

3.3.6.1. Advance information and documentation as is available concerning cargo released for shipment to the terminal and inbound ships due with retrograde cargo.

3.3.6.2. Manifests, bills of lading, or other documents upon which the Contractor's invoice for payment is based.

3.3.6.3. Names, berth and dates ships are to be worked.

3.3.6.4. A listing of cargo to be loaded/discharged on each ship and pre-stow plans and/or stowage plans for discharge operations.

3.3.6.5. Disposition and marking instructions for retrograde cargo and arrangement of inland transportation.

3.3.6.6. Specifications for processing military vehicles.

3.3.6.7. Cargo Status Report to include:

3.3.6.7.1. Aged Cargo Reports (weekly).

3.3.6.7.2. Weekly On-Hand Reports - Import/Export.

### 4.0 CONTRACTOR FURNISHED SUPPLIES/SERVICES AND EQUIPMENT

#### 4.1. Supplies/Services.

4.1.1. The Contractor must furnish:

4.1.1.1. Office equipment such as furniture, telephones and commercial telephone services and other such material required to maintain his operation.

4.1.1.2. Dock pallets for Break bulk Operations.

4.1.1.3. Chocking and blocking materials for stuffing military vehicles, in accordance with the diagrams identified in Section J is to be included in the stuffing rates. Serviceable material from unstuffing of vehicles may be reused. Blocking and bracing materials for stuffing general cargo containers, vessel operations and rail securing will be furnished by the Government as set forth in paragraph 4.1.1.4.

4.1.1.4. Wire cables, turnbuckles, shackles, clips, lumber, dunnage, chocking and blocking materials, which may be required in the performance of the services hereunder. All supplies purchased by the Contractor with prior approval of the Contracting Officer will become the property of the Government. The Government will reimburse the Contractor for such materials/supplies as an out-of-pocket cost. These materials must be used in the performance of work under this contract and must be obtained for and on behalf of the Government who will be the owner thereof at the time of acquisition. Serviceable materials/supplies recovered from down loading ships may be reused.

4.1.2. When the Contractor furnishes from his own stock any materials he must submit a signed certification listing such materials furnished with itemized costs. The Contracting Officer's certification indicating prior approval of the quantity and prices must be presented with an invoice for reimbursement, otherwise reimbursement will not be made.

4.1.3. Dunnage and lashing material furnished by the Contractor in accordance with 4.1.1.4 must be of grades, quality, size, and dimensions suitable for the intended use. These materials shall be delivered by the Contractor to shipside or other designated location(s) as required for operations.

4.1.4. The Contractor is required to issue lumber, lashing gear and other securing materials, as provided in the contract on MT Form 272, Use of Lumber, Dunnage & Lashing Gear (TE-4), which will be supplied by the Government. This form will list the materials issued, the date and time of issue, the vessel name and "A" number (voyage) to which materials are issued and will be signed by the Contractor. At the time of vessel completion, Contractor must obtain signature of the Contracting Officer's Representative covering the vessel operations on the MT Form 272. Only one MT Form 272 will be issued for each vessel.

4.1.5. The Contractor must provide all hazardous/dangerous placards/labels for such cargo transiting the terminal, if required.

4.1.5.1. The Contractor is required to supply plastic envelopes to protect documentation applied on all cargo.

4.1.6. Cleaning of Work Locations.

4.1.6.1. The Contractor must maintain his administrative offices and operational work locations in a clean and orderly condition.

4.1.6.2. The Contractor must clean operational work locations as follows:

4.1.6.2.1. All outside storage areas must be kept clean and debris placed in appropriate trash receptacles for removal from the facility. The Contractor must insure that all work areas are cleaned after operations and that all trash, debris, lumber and lashing equipment which have accumulated in the work areas is policed and placed in trash receptacles or appropriate areas prior to close of business.

4.1.6.2.2. Sort dunnage and lumber by size and pile in a neat and orderly manner; segregate debris, scrap lumber and scrap dunnage on piers into designated containers ready for removal; keep piers, warehouse floors and adjacent

operational areas free of debris and dunnage generated from Contractor's operation. Sort, assemble and stack empty pallets in designated areas.

4.1.6.2.3. Upon completion of rail operations, ensure spanner plates are collected and stored next to the rail ramp.

4.1.6.2.4. The Contractor must maintain, in a clean and sanitary condition, restrooms, smoking, and convenience facilities utilized by the Contractor employees and commercial entrants. Compensation for cleaning workstations will be included in the basic commodity rates.

4.1.6.2.5. Provide all necessary labor, equipment and supervision for the removal of snow/ice from all ramps, loading platforms, loading docks, in and around those buildings and operational areas furnished by the Government.

4.1.6.2.6. The Contractor must maintain sufficient quantities of dry sweep, pig mats, and absorbents to be used on and off the vessels for HAZMAT spills, to include drip pans as required. The Contractor is required to provide the necessary labor and supervision to clean up minor spills and required disposal of such material.

#### 4.2. CONTRACTOR FURNISHED EQUIPMENT.

4.2.1. With the exception of equipment specified as Government furnished, the Contractor must furnish all gear and equipment required to perform all services under this contract, to include appropriate material handling equipment (MHE) for handling 20 foot and 40 foot containers, with or without their lifting pockets. Compensation for equipment is included in the Commodity Rates in the schedule of rates.

4.2.2. Equipment operated on the terminal must be maintained and operated in accordance with applicable federal/state laws and regulations, OSHA, Army, and installation regulations.

#### 4.3. Government Use of Contractor's Equipment.

4.3.1. If for any reason, the contractor is unable to perform services under this contract, it is agreed that the Government may elect to rent and that the contractor shall rent to the Government such of the contractor's gear and equipment as had customarily been allocated to the performance of this contract at rental rates negotiated at time of requirement. The Government will accept such gear and equipment as it may elect to rent where is and as is, and agrees to furnish fuels, lubricants, and operators. A joint condition survey shall be made when the gear and equipment is turned over to the Government and also when returned to the contractor. The contractor shall deliver such gear and equipment to a mutually agreed location. The Government agrees to maintain the gear and equipment and to return it to the contractor in as good a condition as originally received, fair wear and tear expected.

4.3.2. The rental period may continue for the duration of the Contractor's inability to perform services under the contract, but not to exceed 180 days, unless extended or sooner terminated by agreement of the parties. The option to rent gear and equipment will cease upon the effective date of expiration of the contract.

4.3.3. The Contracting Officer will determine whether the contractor is unable to perform services under the contract and will determine the duration of such inability, such findings of fact to be conclusive on the parties subject to the Disputes Clause.

#### 4.4. Removal of Contractor's Equipment and Supplies.

4.4.1. Within three (3) working days after the expiration of the contract the Contractor must remove from the premises all equipment and supplies belonging to him. If removal has not been accomplished within three (3) working days the Government will remove them from the premises at the Contractor's expense.

#### 5.0 CONTRACTOR'S DUTIES.

## 5.1. General.

5.1.1. The Contractor must provide a representative physically present during operating hours. This individual must have decision-making authority and shall act as the central point of contact. The Contractor must designate an individual in authority when contract work is being performed at other than normal working hours.

5.1.2. The Contractor must provide a full-time staff to plan, organize, control and support the performance of the contract for each function and related supporting services. Compensation will be included in the commodity rates.

5.1.3. The Contractor is responsible for planning and scheduling all operational functions within the scope of the contract. The Contractor must utilize information provided by the Government and with his own resources develop his operations plan and present it at a daily operation meeting.

5.1.4. Contractor stevedore personnel must enter/exit and transport personnel to/from parking and work sites through the designated gates.

5.1.5. Immediately notify the Contracting Officer of his inability to perform any task or function described in the contract.

5.1.6. The Contractor must perform terminal services including receiving, checking and clerking incident to the movement of the cargo from receipt to delivery. Unless otherwise stated, the Contractor must provide the following services that are included in the applicable commodity rates.

5.1.6.1. Checking of cargo upon receipt and delivery, and advising the Contracting Officer of damage or discrepancies. As a minimum, the Contractor must ensure that all data on documents accompanying the shipment is consistent with the cargo received; mark cargo, prepare and affix shipping label when necessary or as directed by the Contracting Officer, identify dangerous and hazardous cargo; annotate and correct data on shipping documents and/or other appropriate documents as required by the contract.

## 5.2. Cargo Management.

5.2.1. Upon request, the Contractor must:

5.2.1.1. Provide the Contracting Officer with cargo management information (i.e., regarding movement, status, accountability and/or disposition of all cargo).

### 5.2.2. Daily Operations Meeting.

5.2.2.1. Daily, Monday through Friday, unless otherwise specified, at approximately 2:45 PM, an Operations Meeting shall be held at a Government designated location at TC Dock Bldg. 3852. The purpose of the meeting is to review current operations and to discuss and finalize operation plans for the next work period and the following day's activities. Meetings held on Friday will include planning for operations to be conducted on Saturday, Sunday, and Monday.

5.2.2.2. The Contractor must ensure that knowledgeable representatives attend and present their daily operation requirements and plans. The Contractor must present these plans, including information on labor, services and equipment, for review, coordination, and concurrence prior to actual operations. For vessel operations load or discharge, Contractor must present his Concept of Load/Discharge plan for each vessel for review and concurrence to include proposed gang structure and composition to the Contracting Officer.

5.2.2.3. The regularly scheduled Daily Operations Meeting does not preclude the Contractor attendance at additional meetings to discuss, plan and coordinate other terminal operations and special requirements.

5.2.2.4. The Contractor must coordinate his plans as necessary and provide all labor, services and equipment required to effect the most expeditious and economical operation.

5.2.2.5. Labor planned, requested and authorized at the Daily Operations Meeting must be based upon required operations and ship's arrival and estimated time of completing the scheduled operations.

5.2.2.6. Requirements for heavy lifts, floating equipment, placement of barges, barge derricks, tugs, other equipment services and extra labor requirements must be approved by the Contracting Officer.

5.2.2.7. The Contractor must keep a physical on-hand inventory of all cargo by quantity, type, model, and destination terminal location, to be provided daily to the Contracting officer at the 2:45 P.M. daily operations meeting.

### 5.3. Terminal Operations.

#### 5.3.1. Cargo Receipt / Staging.

5.3.1.1. The Contractor must, as directed by the Contracting Officer, receipt and/or stage cargo by category in designated areas as follows:

5.3.1.1.1. Frustrated / Hold Cargo

5.3.1.1.2. Sensitive / Controlled / Classified Cargo

5.3.1.1.3. Hazardous Cargo

5.3.1.1.4. Import Cargo by Consignee and/or Unit Identification Code (UIC)

5.3.1.1.5. Export Cargo by Port of Debarkation (POD) and/or Unit Identification Code (UIC)

5.3.1.1.6. Retrograde (import) Cargo

5.3.1.1.7. Rail staging areas H, I, J, K and L

5.3.1.1.8. Vessel staging areas A, B, C, D, E, F, G, warehouse and dock

5.3.1.1.9. Truck staging areas A, B, C, D, E, F, G, I, warehouse and dock

5.3.1.1.10. Container staging areas, container lots 1, 2, 3, Area F and H

5.3.1.2. The Contractor must receipt for cargo at the designated receipt location and transfer to an initial point of rest within the designated staging areas. Compensation will be included in the commodity rates.

5.3.1.3. Cargo must be staged to ensure optimum utilization of designated space and storage areas.

#### 5.3.2. Transfer of Cargo

5.3.2.1. Transfer of cargo between cargo staging areas, from one place of rest to another place of rest or from its place of rest in the Cargo Staging Area to the point of loading (or reverse) shall be included in the Contractor's normal duties and the basic commodity rate. The Contractor must maintain an audit trail of all cargo transfers between storage/warehouse locations and document the transfer the same day.

5.3.2.1.1. The following cargo is subject to transfer:

5.3.2.1.1.1. Military vehicles must be moved to a storage area and then moved to a loading or stuffing area.

5.3.2.1.1.2. Hazardous cargo, which must be transferred into a building authorized for storage of hazardous materials. After storage/assembly it must be stuffed into a container or moved to a loading area.

5.3.2.1.1.3. Transfer of Vessel equipment Flat-racks/Pontoons/Sea Sheds from the Wet Basin, the initial place of rest, to a final storage location, is payable under the appropriate man-hour and equipment rental rates as set forth in the Contract.

5.3.2.2. Transfer of cargo for the convenience of the Government. When directed by the Contracting Officer, the Contractor must check the cargo on the document furnished by the Government, segregate and move the cargo to the designated area. Contracting Officer directed transfers are a non-routine duty for which the Contractor will be compensated at the applicable man-hour rates contained in Schedule II.

5.3.2.3. Transfer Documentation Procedures. The Contractor must:

5.3.2.3.1. Upon transfer of cargo from one staging area to another, annotate the transfer date and new location and retain the #3 copy of the Transportation Control and Movement Document (TCMD), DD Form 1384-2 (TE-5).

5.3.2.3.2. Upon arrival of cargo at new location, remove #5 copy of TCMD for inventory file. Update the #2 and #3 copy of TCMD with new location, receipt date, and signature of checker, then forward to the Cargo Operations Division when the transfer is complete.

5.3.2.3.3. Return the #5 Xerox copy of TCMD to the transferring area to update the Contractor's audit trail by matching it with the #4 suspense copy.

5.3.2.3.4. Insure documentation accompanying transfer cargo is processed the same day as the transfer and forwarded to the Cargo Operations Division within two hours of the transfer.

5.3.3. Handling Dangerous/Hazardous Cargo.

5.3.3.1. The Contractor must ensure that at least two employees at all times during the life of the contract are qualified and authorized to certify the proper preparation, packaging, marking and shipment of hazardous material in accordance with Title 49 CFR (specially Parts 100-199) and IMO.

5.3.3.1.2. Contractor must ensure all labor is certified in handling and stowing Hazardous cargo IAW CFR 49

5.3.3.3 When hazardous (label) cargo as classified in Code of Federal Regulations (CFR), Title 49, Parts 100-199 and/or International Maritime Organization (IMO) regulations is moved through the terminal, the Contractor must receive, segregate, document, handle and protect the cargo as necessitated by its label, weather and cited regulations. The Contracting Officer must be notified upon receipt of hazardous cargo improperly identified or mislabeled. The Contractor must also provide the Contracting Officer a Dangerous Cargo Load List (DD Form 2776) (TE-8) for all hazardous cargo so it may be correctly manifested.

5.3.4. Terminal Services

5.3.4.1. The Contractor must perform terminal services including receiving, checking, and clerking incident to the movement of the cargo from receipt to delivery. Unless otherwise stated, the Contractor must provide the following services that are included in the rates in the schedule.

5.3.4.2. Checking of cargo upon receipt and delivery, and advising the Contracting Officer of damages or discrepancies. As a minimum, the Contractor must ensure that all data on documents accompanying the shipment is

consistent with the cargo received; mark cargo; prepare and affix shipping label when necessary or as directed by the Contracting Officer; identify dangerous and hazardous cargo; and annotate and correct data on shipping documents and/or other appropriate documents as required by the contract.

#### 5.3.5. General Cargo Documentation Procedures

5.3.5.1. The Government will make every reasonable effort to insure that documentation for receiving and processing cargo is furnished to the Contractor in a timely manner.

5.3.5.1.1. The Contractor must pickup cargo import/export documentation from the Cargo Operations Division (COD). Upon receipt of the cargo, the Contractor must forward the required documentation to COD within two hours of receipt.

5.3.5.1.2. If documentation is not available to the Contractor upon initial receipt of the cargo, the Contractor will notify the Contracting Officer and upon direction, prepare an MT Form 239-R (Frustrate - Hold for TCMD) (TE-6). This form will be completed in accordance with MTMCR 56-69. (MTMC 56-69, Appendix D is being amended to reflect that the minimum data elements required to complete MT Form 239-R are Items 1-3 6 (to include Model number), 7,9,13 (to include USA#, serial #, bumper #, UIC), 15, and Item 4 (if available). Appendix D is also being amended to reflect the requirement for annotation of actual cargo dimensions vice the current wording, which only requires annotation if any dimension is in excess of 10 feet. The Contractor is required to perform IAW these contract provisions vice the existing requirements in MTMCR 56-69 for the completion of this form.

5.3.5.1.2.1. The costs for preparation of the above documentation will be included in the commodity rates.

5.3.5.1.2.2. All nested / secondary loaded cargo that requires documentation accountability will be performed at the man-hour rates.

5.3.5.2. If the TCMD is lost or mutilated after receipt of the cargo, the Contractor must request the Government to provide a replacement TCMD from the existing cargo database. The Government will provide the Contractor with the replacement TCMD and the Contractor must apply the TCMD and verify the replacement data to the cargo without additional compensation.

5.3.5.3. The costs for preparation of the above documentation will be included in the commodity rates.

5.3.5.4. The Contractor must notify the Contracting Officer of any errors noted in the documentation or between the documentation and the cargo. At the direction of the Contracting Officer, the Contractor must correct or add to ensure that the documentation accurately reflects the shipment and the requirement of DOD Reg. 4500.9R Defense Transportation Regulation (DTR) and MTMCR 56-69. The Contractor will be reimbursed for correcting documentation errors as part of the applicable cargo commodity rate. The Government projects that 30% of the cargo documentation received by the Contractor shall require corrective annotation.

5.3.6. Misshipment (Misdirection) of Cargo. The Contractor is responsible for the misshipment (misdirection) of cargo attributed to the Contractor. The Contractor must reimburse the Government for all additional cargo handling and transportation costs incurred by the Government as a result of the misshipment (misdirection). The Contractor must check all shipments to verify accuracy.

5.3.7. Security Cargo. After receipt of cargo, which requires safeguarding, must be placed immediately into a secure area designated by the Government unless a written waiver is obtained from the Contracting Officer.

5.3.8. LOGMARS Concept. The LOGMARS concept is designed to improve the flow of cargo through the SPOE/SPOD and eliminate hard copy documentation. It utilizes 3 of 9 Bar Coded labels and portable scanners in conjunction with a computer database to track and process cargo. See Attachment .

5.3.8.1. Clerking and Checking - Receipt of Cargo (initial). Upon the direction of the Contracting Officer or his/her designated representative any one or more of the following actions must be followed:

5.3.8.1.1 Initial Inspection of Documentation. The Contractor must check upon arrival of equipment to assure that the Government has properly placed LOGMARS labels on the equipment (see LOGMARS Attachment). This check must include verification that all in-the-clear data on the label is correct. If the Contractor finds errors in either the bar coded data or the in-the-clear data, the Contractor must prepare a Frustrate Form MT 239, and submit this form in accordance with paragraph 5.3.8.1.3.

5.3.8.1.2. The Contractor must receive cargo into the port, at initial entry (e.g. rail head) or at the staging area or vessel, by scanning the LOGMARS label using the LOGMARS equipment in accordance with the LOGMARS Attachment, Paragraph 8e.

5.3.8.1.3. If cargo arrives at the port without the proper LOGMARS labels, the Contractor must prepare a Frustrate Form, MT 239-R (ATC-8), in four (4) copies. One copy must be placed on the frustrated equipment, two copies must be given to the import/export section and the Contractor must keep one copy. The proper data must be entered into the database by terminal personnel and a LOGMARS label produced. Import/export Section shall return one copy of MTEA Form 55 with one LOGMARS label permanently affixed and two LOGMARS labels to be placed on the cargo. The Contractor must return his initial suspense copy of MTEA Form 55 to the import/export section to indicate that LOGMARS labels have been affixed to the cargo. The Contractor does not read this label at receipt because, when the data is entered into the database, the receipt must also be entered. The first time the Contractor reads this label is at transfer or lift.

5.3.8.1.3.1 The Frustrate Form MTEA Form 55 shall be prepared in four copies.

5.3.8.1.3.2 The Frustrate Forms must be delivered to the import/export section at the same time that the PBCR is delivered, after two (2) hours of operation or at the end of a function whichever is earlier.

5.3.8.1.3.3 The frustrated cargo must be placed into a frustrate area as directed by the Contracting Officer's Representative until the correct LOGMARS labels are applied and then the cargo must be moved to the staging area.

5.3.8.2. Clerking and Checking - Transfer of Cargo from One Staging Area to Another. Upon the direction of the Contracting Officer or his/her designated representative the following actions must be conducted:

5.3.8.2.1. The LOGMARS labels of equipment transferred from one staging location to another staging location must be read with the PBCR and a new staging location entered into the PBCR.

5.3.8.2.2. At the new location the equipment shall be checked for damage and if damage is found the proper damage code shall be entered into the PBCR.

5.3.8.3. Clerking and Checking - Loading of Cargo onto the Ship. Upon the direction of the Contracting Officer or his/her designated representative the following actions will be conducted:

5.3.8.3.1 After the equipment has been placed in stow the Contractor must scan the LOGMARS labels with the Portable Bar Code Reader as defined in the LOGMARS Attachment, paragraphs 7 and 8h.

5.3.8.3.2. The Contractor must manually enter the actual stow location into the LOGMARS PBCR in accordance with the operator's instructions.

5.3.8.3.3. The Contractor must inspect cargo for damage after the cargo has been placed in stow. When damage to the equipment is found the Contractor must enter the appropriate damage code into the PBCR. Damage codes are listed in the LOGMARS Attachment, paragraph 9.

5.3.8.3.4. If the Contractor gets a bad read in the stow he must comply with paragraphs 5.3.8.1.3 above. The hatch must not be closed until all frustrate forms have been processed and any additional damage codes have been entered into the PBCR. The Contracting Officer's Representative or his/her inspector will give final approval for closing the hatch.



5.3.8.4. Down Loading of Data from the PBCR. The Contractor must deliver the PBCR to the port documentation section for down loading after completion of any of the following functions:

- (1) After reading a maximum of 200 TCN's.
- (2) Two hours of operations.
- (3) Completion of activity on the day or function.
- (4) Loading of hatch or deck.
- (5) Mutually agreed to discernable break point in operation.

5.3.8.5. Reports Generated for Use by the Contractor. The Government will produce from the microcomputer a listing of the data collected by the Contractor when using the PBCR. This report will contain the Transportation Control Number (TCN), Cube, Weight, Type Pack, Dimensions, Commodity Code, Measurement Ton, and Nomenclature of the equipment. The Contractor will be able to use this report to verify the billing records in place of the hard copy of the TCMD.

5.3.8.6. Equipment to be furnished to the Contractor by the Government. The U.S. Government will furnish PBCR's to the Contractor per paragraph 2 of the LOGMARS Attachment. The Contractor is responsible for this equipment when such equipment is in the possession of the Contractor. Furthermore, the Contractor must establish procedures to control and protect U.S. Government property in control of the Contractor in accordance with Section 45 of the Federal Acquisition Regulation (FAR) and paragraphs 8b and 8c of the LOGMARS Attachment.

5.3.8.7. Maintenance of Equipment (PBCR). The U.S. Government accepts the risk of maintenance of the equipment (PBCR) providing the Contractor cares for the equipment and complies with the requirements of paragraphs 8b, c, and d of the LOGMARS Attachment and the clause entitled Government-Furnished Property Clause (Short Form), FAR 52.245-4, of this contract.

5.3.8.8. Training of Contractor Personnel. The U.S. Government will furnish training to the Contractor's personnel in the use of LOGMARS equipment. The Government will determine the number of checkers to be trained. The Contractor will be paid under the man-hour schedules. Times and locations of this training will be announced by the Contracting Officer. All training will be in the English language unless special arrangements are requested by the Contractor and approved by the Contracting Officer.

5.3.8.9. The Contractor, in all cases when the PBCR is utilized, must provide tally sheets (provided by the Government) to be used as a manual backup.

5.3.8.10. LOGMARS scanning and tally sheets to be included in the commodity rates.

## 6.0 VESSEL/TERMINAL OPERATIONS.

### C.6.1. General.

6.1.1. Management functions include: export and import (retrograde) cargo planning and supervising ship, ocean going barge or lighter loading and discharge operations, documentation, and stowage plan preparation.

6.1.2. Commodity Services. Loading and unloading cargo, material and equipment aboard vessels, trucks, railcars, cargo transporters, handling dunnage, lashing and securing aboard vessels, and clerking and checking shall be paid at the applicable commodity rate in Schedules IA, IB1, IB3, IF.

6.1.3. Clerking and Checking. The Contractor must check cargo from place of rest to aboard the ship during loading and the reverse during discharging by use of TCMD's/LOGMARS and the Concept in paragraph 5.3.8.

6.1.4. Cargo Management Standards (Ship, Barge, Lighter).

6.1.4.1. Export Break bulk Cargo.

6.1.4.1.1. The Contractor must comply with the transportation priorities contained in the Defense Transportation Regulation, DOD 4500.9R, and will observe the first-in, first-out (FIFO) concept of cargo movement. In the event of any priority or RDD conflicts, the transportation priorities contained in the Defense Transportation Regulation shall control in preference over the FIFO concept.

6.1.4.1.2. Cargo must be loaded aboard ships, barges and lighters in accordance with stevedoring industry practice so cargo will not be damaged in transit. Cargo must not be loaded in violation of CFR Title 49, parts 100-199 and/or IMO regulations.

6.1.4.2. Disposition of Cargo. The Contractor must seek disposition instructions for export break bulk cargo and import break bulk cargo (retrograde) within twenty-four (24) hours of receipt of cargo.

6.1.5 Cargo loaded or discharged from a vessel on a MAFI to include stuffing / stripping of MAFI must be inclusive in the Commodity Rates, to include return of the MAFI to the vessel.

## 6.2. Loading of Vessels, Lighters and Ocean Going Barges.

### 6.2.1. General.

6.2.1.1. The Contractor must remove and handle cargo from within the Cargo Staging Area, open-top railcars, open-top Government trucks/trailers alongside ship; from barges, lighters, scows, carfloats and open-top railcars or carfloats alongside ship. The Contractor must stow said cargo in any space in the ship, including holds, tween decks, on deck, and deep tanks. Cargo stowed on APS-3/LMSRs requires tighter stow and the APS-3/LMSR Schedule of Rates applies (Schedule 1A1). Blocking, bracing and shoring of cargo shall be included in the commodity rates.

### 6.2.2. Procedures. The Contractor Must:

6.2.2.1. When a vessel is nominated, survey all cargo on the Load List and advise the Government of those items not on-hand.

6.2.2.2. Pull the TCMD's from the cargo and check POD, pieces, weight and cube.

6.2.2.3. Report any discrepancies (shortage, overage, damage or pilferage) to the Contracting Officer prior to removing cargo from the warehouse or staging area.

6.2.2.4. Annotate on the load copy (#2 and #3 of the TCMD or load / discharge list) the location of the cargo on the vessel, the vessel's voyage number, the type of activity (e.g., LO/LO, RO/RO, TO/TO), the date, Serial # and signature.

6.2.2.5. Forward the load copy to the Cargo Operations Division.

6.2.2.6. Remove the designated cargo from the warehouse or storage area to a location at the vessel and load the vessel in accordance with Government approved the Contractor prepared stowage plans.

6.2.2.7. Prepare a final stowage plan.

### 6.2.3. Lashing, Securing, Chocking, Blocking and Bracing of Cargo Stowed in Vessels

6.2.3.1. The Contractor must lash and secure all cargo loaded aboard ship sufficiently to prevent shifting in transit.

6.2.3.2. The methods and material required to ensure proper lashing, securing and chocking on ships are outlined in the Attachments. Dunnage and lashing materials must be of grades and quantities suitable for the intended use.

6.2.3.3. Handling Dunnage. The Contractor must load, shift within the same hatch, and lay dunnage, in single or multiple layers (including cordwood, paper, tarpaulins, matting, and reefer stripping, or other types of cargo separation) necessary to properly stow and secure the ship's cargo. This service shall be included in the commodity rates, Schedule IA1.

6.2.3.4. Carpentry Work. The Contractor must perform all carpentry work, i.e., chocking, blocking and bracing required to secure cargo when required with compensation included in the applicable commodity rates. Carpentry work excluded from the commodity for which the Contractor will be paid at the applicable man-hour rate, consists of the construction of acid boxes on deck, cribbing, bulkheads, ceilings, partitions, false decks, and catwalks (including ladders and steps).

6.2.3.5. Lashing, securing, chocking, blocking and bracing, to include Vessel ramps, for vessels must be accomplished in accordance with MTMCTEA REF 97-55-22, utilized in vessel loading.

#### 6.2.4. RO/RO Ships.

6.2.4.1. The Contractor must lash and secure all military vehicles and other rolling stock onboard the ship during loading operations, using the ship's lashing gear or gear furnished by the Government. This includes the use of prefabricated lumber stands under trailers or vans in order to provide adequate support of cargo.

#### 6.2.5. Final Stowage Plans and Vessel Papers.

6.2.5.1. Vessel stowage plans must be prepared by the Contractor in accordance with Chapter 3, Section C of DTR DoD Regulation 4500.9R. The Contractor must ensure that data indicated on plans is accurate, legible, concise and reflects the true cargo stowage aboard the vessel.

6.2.5.2. For vessels, which load at Charleston or other port for which the Contractor is responsible for loading, the Contractor must:

6.2.5.2.1. Prepare a master stowage plan.

6.2.5.2.2. Reproduce plans in the number designated by the Contracting Officer (minimum five (5) copies).

6.2.5.2.3. Deliver the master stowage plan and four (4) copies to the Cargo Operations Division within one hour of completion of cargo operations.

6.2.5.3. For vessels, which load at other ports in addition to Charleston, and where the final loading is at Charleston, the Contractor must:

6.2.5.3.1. Receive the vessel's traveling stow plan from the Contracting Officer's Representative upon vessel arrival.

6.2.5.3.2. Complete the traveling stow plan and vessel cargo recapitulation sheet.

6.2.5.3.3. Reproduce plans in the number designated by the Contracting Officer (minimum five (5) copies).

6.2.5.3.4. Deliver the traveling stow plan and designated copies to the Cargo Operations Division within one hour of completion of loading.

6.2.5.4. For vessels, which load at the 841st U.S. Army Transportation Battalion MPC and where final loading is not at the 841st U.S. Army Transportation Battalion MPC, the Contractor must:

6.2.5.4.1. Prepare a master stowage plan if the 841st U.S. Army Transportation Battalion MPC is the first port of loading.

6.2.5.4.2. Enter the 841st U.S. Army Transportation Battalion portion of loading on the master traveling stow plan if the 841st U.S. Army Transportation Battalion is an intermediate port of loading.

6.2.5.4.3. Reproduce plan in the number of copies designated by the Contracting Officer (minimum five (5) copies).

6.2.5.4.4. Deliver the traveling stow plan and designated copies to the Cargo Operations Division prior to vessel sailing.

### 6.3. Discharging Vessels, Lighters and Ocean Going Barges.

#### 6.3.1. General Cargo. The Contractor must:

6.3.1.1. The Contractor must remove and handle cargo from any space in the ship, including holds, tween decks, on deck and deep tanks. The Contractor must move cargo at place of rest within a Cargo Staging Area; open-top railcars, trucks/trailers alongside ship; barges, lighters, scows, carfloats or open-top railcars on carfloats alongside ship.

6.3.1.2. Remove unlash all cargo to be unloaded from the ship, and remove from the ship all tomming, chocking, blocking, tank beds, and all types of securing materials and dunnage flooring except false decks. All blocking and bracing materials removed from the ship shall be segregated by major type, sorted by size, accounted for and moved to areas identified by the Contracting Officer. All lumber removed from the ship must be sorted by size and accounted for.

6.3.1.3. Bring discrepancies to the attention of the Government Marine Cargo Specialist working the ship discharge. Annotate the manifest to reflect overages, shortages, damages or other discrepancies.

6.3.1.4. Ensure that all cargo discharged without documentation is marked with the ship's name.

6.3.1.5. Move the cargo to a designated place of rest. Cargo with special handling code 2, 4, 5, 6, or any pilferable cargo must be staged in Bldg. 3852 or as designated.

6.3.1.6. Distribute annotated TCMDs within one hour after completion of vessel discharge. The Contractor must provide Cargo Operations Division, in one package, one copy of the TCMD for each piece for that vessel. For overages Contractor shall provide MT Form 239-R. Shortages will be annotated on TCMD or the manifest.

6.3.2. RO/RO Ships. The Contractor must remove prefabricated lumber stands, lumber and dunnage in conjunction with discharge operations. Lashing gear generated from ship discharge operations must be removed from any deck and transferred to areas aboard the ship as designated by the Contracting Officer.

### 6.4. Ocean-Going Barges and Lighters - Unloading and Loading.

#### 6.4.1. Ocean-Going Barges and Lighters Unloading.

6.4.1.1. Barge and lighter unloading includes doing all work in connection with unlash and unsecuring the cargo (immediately notifying the Contracting Officer upon discovery of any damaged cargo), removing the cargo from the barge to pallet boards, transferring cargo and tiering at the place of rest within the Cargo Staging Area or to any conveyance along side ship. Upon completion of the unloading, the Contractor must clean the barge of debris and scrap, place the debris and scrap on pallet boards and remove it to the assigned storage area.

6.4.1.2. The Contractor must discharge lighters and barges, with compensation payable at the commodity rates set forth in Schedule IA6. In addition to the duties cited in 6.3., if required, the Contractor must break seals and record the seal numbers.

### 6.5. Ocean-Going Barge and Lighter Loading.

6.5.1. Loading of barges shall include the preparation of the barge or lighter for handling cargo, the breaking down or untying and transferring of cargo from its place of rest within the designated Cargo Staging Area or from any conveyance within the Cargo Staging Area, loading the cargo on the barge or lighter including all necessary lashing, blocking, bracing and securing within the barge or lighter.

6.5.2. The Contractor must load lighters and barges and be compensated at the applicable commodity rates set forth in Schedule IA5. In addition, to the loading procedures cited in paragraph 6.2., if required, the Contractor must affix seals.

## 6.6. Operations (general).

### 6.6.1. Opening and Closing Ships.

6.6.1.1. Routine. Opening and closing ships is a routine duty, and is included in Schedule IA1 rates. When requested, the Contractor must:

6.6.1.1.1. Remove and replace tarpaulins, battens, hatch covers, pontoons, beams and tank tops (with not more than four bolts) for all decks and deep tanks during both the discharging and loading operations, and when necessary because of weather or working conditions.

6.6.1.1.2. Place hatch beams, pontoons and reefer plugs on the wharf when necessary.

6.6.1.1.3. Remove, handle, replace or set reefer plugs while handling cargo in refrigerated spaces or during periods when loading and/or discharging operations are interrupted.

6.6.1.1.4. Placing/removing sill cover on RO/RO ships is a routine Contractor duty and is included in the commodity rate.

6.6.1.2. Non-Routine. The following opening and closing is not a routine duty for the Contractor and compensation therefore will be at the applicable man-hour rates in the Schedule of Rates.

6.6.1.2.1. When performed at the request of the Contracting Officer for the account of the vessel.

6.6.1.2.2. When performed in connection with extra labor services ordered by the Contracting Officer.

6.6.1.2.3. When the Contractor is directed to load and/or discharge 100 measurement tons or less at any one hatch.

6.6.2. Opening and Closing Lighters. Removal and replacement of bolts is included in the opening and closing of lighters.

### 6.6.3. Rigging and Unrigging.

6.6.3.1. Routine. Routine rigging and unrigging is a duty included in the commodity rates of Schedule IA1. When ship's gear is used for handling cargo, the Contractor must conduct a complete pre operation safety check of the gear; rig and unrig all gear; and shall hoist, lower and secure hatch tents when necessary. Rigging and unrigging shall include topping, lowering and trimming of booms. Rigging and unrigging shall also include rigging and unrigging union falls, Frisco rig and heavy lift booms. The Contractor's responsibility for rigging heavy lift gear and heavy lift booms commences only after the booms have been removed from their collars.

6.6.3.2. Non-Routine. The following rigging and unrigging shall not be a routine duty of the Contractor and the Contractor will be compensated therefore at the applicable man-hour rates in the Schedule of Rates:

6.6.3.2.1. When performed at the request of the Contracting Officer for the account of the ship.

6.6.3.2.2. When performed in connection with extra labor services ordered by the Contracting Officer.

6.6.3.2.3. When the Contractor is required to break out booms from collars or boom rest, or to reeve guys or topping lifts through blocks.

6.6.4. Slings and Unslings of Cargo. When required, the Contractor must sling and unsling cargo during loading or discharge by floating derricks and/or dock cranes. This is a routine duty and included in the commodity rates in Schedule IA1.

## 7.0 RAILCAR/TRUCK LOADING AND UNLOADING.

### 7.1. General.

7.1.1. Management responsibilities include planning and supervising operations so that loading and unloading is accomplished within the time frames of the applicable tariffs or tenders. In addition, Contractor will conduct all LOLO operations IAW Management Handling Equipment (NAVFAC P-307).

7.1.2. Commodity Services. Compensation for services is payable at the applicable rates in Schedule IB. This shall include moving cargo to a place of rest in the designated cargo staging area in a pattern that shall normally result in only one more move when it is out loaded from the terminal. This place of rest may either be within the area previously designated for that cargo type and destination or within a security area.

### 7.1.3. Minimum Performance Standards - (Demurrage/Detention).

7.1.3.1. The Contractor must abide by all tenders/tariffs and unless otherwise directed by the Contracting Officer, will unload and load conveyances within the time prescribed by applicable tariffs or tenders. The Contractor must segregate cargo by consignee, UIC, Model, and POD, complete checking, and, if appropriate, provide a receipt to the carrier within the time frame allowed by the applicable tender/tariff in order to avoid detention/demurrage charges. The Government will in all instances possible provide the Contractor with the prescribed discharge time as appears in the applicable federal tariff. The Contractor is responsible for payment of demurrage or detention charges when incurred through his fault or negligence. If demurrage or detention occurs as a result of the direction of the Contracting Officer, it will be for the account of the Government, in which event the Contracting Officer must authenticate the direct demurrage/detention on the spot.

7.1.3.2. Cargo must be unloaded or loaded so it is not damaged in transit or while being loaded or unloaded.

### 7.1.4. General Procedures for Unloading Trucks and Railcars.

7.1.4.1. Discharge, check, receive, and warehouse cargo as follows:

7.1.4.2. Receive the Load Lists, TCMD's and GBLs. On sealed shipments, seal number must be annotated on the load list and TCMD and be verified by the checker prior to the seal being broken.

7.1.4.3. The Contractor must ensure that the seal number, which is indicated on the GBL, is intact on the door of the truck and/or railcar and so note on Load List. Notify Contracting Officer upon discovery of a damage or discrepancy in the seal. Once discharge is complete, the Load List can be checked.

7.1.4.4. As the cargo is discharged, check the marking on the cargo against the documentation (TCMD's, MT Form 239-R and Load List). If no exceptions are noted, receive the cargo and verify shipment receipt on appropriate documentation as follows:

7.1.4.4.1. On all copies of the Load List, annotate the Julian date, warehouse number or storage location, sign checkers signature block or print checker's name.

7.1.4.4.2. On the #1 and #2 copies of the TCMD, annotate the Julian date, warehouse staging location, or print checker's name, and sign the "checker's signature block".

7.1.4.4.3. If the cargo has been designated as "transfer cargo", annotate the receipt date in Julian date form, transfer code (initial receiving warehouse/location) and the number of the warehouse/location transferred to (e.g., area "B" to TC dock), and sign checker's signature on the #1 and #2 copies TCMD.

7.1.4.4.4. Insure that the markings on the cargo agree with the marks on the Load List/TCMD, annotating any missing data (e.g., commodity codes, type of label cargo, type pack, dimensions on outsized cargo).

7.1.4.4.5. Pull and retain two copies of the TCMD.

7.1.4.4.6. Place the TCMD into a clear plastic envelope and secure the envelope to the cargo in a manner to preclude loss while in transit. With a black felt tip marker, annotate the receipt date and POD on the face of the plastic envelope.

7.1.4.4.7. If exceptions are noted, receive freight and annotate the documentation as follows:

7.1.4.4.7.1. If the discrepancy is in the Transportation Control Number (TCN) or if there is no documentation (Load List or TCMD) for the cargo (and the cargo is marked for Charleston), follow the procedures in 5.3.5 for preparation of the TCMD or MT 239-R, add the shipment to the Load List by entering the TCN, pieces, weight, cube and consignee in the same manner as other cargo listed on the Load List. Two (2) copies of the MT Form 239R must be retained, one of the copies shall be taped to the cargo and the cargo placed in the frustrated cargo staging area.

7.1.4.4.7.2. If the discrepancy is due to damage or pilferage, the Contractor must notify the Contracting Officer, who will verify damage or pilferage. When authorized by the Contracting Officer, the Contractor must proceed with the receiving operation as specified for shipment with no exceptions. The damage or pilferage must be annotated on all copies of the Load List or TCMD and the Contractor must obtain the signature of the Government Inspector acknowledging the damage or pilferage on all copies of the Load List. The #1, #2 and #6 copies of the TCMD must be annotated by the Inspector.

7.1.4.4.7.3. If there is a discrepancy in the number of pieces, weight, cube, or POD, circle the original (incorrect) entry and add the corrected data on all copies of the Load List or TCMD, and the Contractor must obtain the signature of the Governmental Inspector acknowledging the changes. Other than drop trailers or railcars, the checker must obtain the driver's signature on the Load List in acknowledgement of the discrepancy. The checker must then complete the receiving process as specified for shipments with no exceptions.

7.1.4.4.8. The original and one (1) copy of the Load List and the one copy of the TCMD and/or one copy of the MT 239-R is forwarded by courier within two (2) hours of discharge to the Cargo Operations Division.

7.1.4.4.9. The remaining copies of the TCMD remain on the cargo.

7.1.4.4.10. The Contractor must provide two copies of each annotated Load List / TCMD / Tally Sheet, and return them to the Cargo Operations Division upon completion of discharge.

## 7.2. Loading and Unloading Railcars.

### 7.2.1. General.

7.2.1.1. Management. In addition to 7.1.1, coordinate the scheduling for load and discharge of cars.

7.2.2. Railcars. Spotting and moving railcars will be a Government responsibility. The Cargo Operations Division will notify the Contractor of the expected arrival of railcars, the number of cars, the contents, the estimated time of arrival (ETA), and any other information requested. The Contractor must designate the area/location where the car(s) are to be delivered. When the Contractor is required to operate Government Owned Rail switch car/track mobile for cargo related operations, compensation will be IAW the man-hour schedules.

### 7.2.3. Railcar Unloading.

7.2.3.1. General. The Contractor must unload cargo from railcars, and this duty includes, but not be limited to the breaking of seals, opening and closing of car doors, immediately notifying the Contracting Officer upon discovery of any damaged cargo, performing all work necessary for unlash and un-securing of cargo to include burning of tie down bars, and removal of the tie down devices, removal of cargo from cars to pallet boards and tiering at place of rest within the cargo staging area, (includes the drayage from TC rail area to TC dock area). Upon completion of the unloading, the Contractor must clean the cars of paper, dunnage, steel, and/or wire strapping, remove chocks and bracing, including nails and bolts, used to secure chocks from railcar beds and sides of car; place removed materials on pallet boards and move to the designated area. Reasonable care must be exercised to prevent paper, dunnage, shoring, steel, wire strapping and chocks, and nails from falling on the ground or roadbed adjacent to the railcar being unloaded. Secured materials (partitions, fittings or fixtures) that are an integral part of cars must be returned thereto prior to release of the cars. For open-top/flatcars, ramps, tie down equipment, and other devices that are part of the railcar they shall be replaced and secured in/on the railcar. Restraints must be locked into position and doors left open or closed depending on the policy of the delivery railroad. Chains on DODX flatcars must be patterned upon completion of discharge.

### 7.2.4. Railcar Loading.

7.2.4.1. General. The Contractor must load cargo on railcars. This includes the preparation of cars for handling cargo, breaking down or un-tiering cargo, transportation of the cargo from place of rest (or from any inland cargo conveyance, within the cargo assembly area) to the railcar loading the cargo within/on the cars and all necessary lashing and securing of cargo within/on the cars.

7.2.4.2. Railcar Loading Procedures. The Contractor must:

7.2.4.2.1. Check cargo against TCMDs, annotate Julian date and checker signature and load railcar.

7.2.4.2.2. After the railcar has been loaded, forward one copy of the TCMD to Cargo Operations.

7.2.4.2.3. Notify Cargo Operations three hours before the completion of the railcar loading.

### 7.3. Loading and Unloading of Trucks.

#### 7.3.1. General.

7.3.1.1. Management. In addition to 7.1.1, coordinate scheduling and arrival of trucks for load and discharge; establish a short line for discharge of trucks requiring limited handling.

7.3.1.2. Commodity Services. As determined by the Bill of Lading, the Contractor must perform the duties in 7.1.2. in accordance with minimum performance levels.

7.3.1.3. Except when the carrier has the responsibility for loading or discharging inland cargo conveyances, as determined by the Contracting Officer, the Contractor must perform the functions enumerated below.

#### 7.3.2. Truck Unloading.

##### 7.3.2.1. General.

7.3.2.1.1. Truck unloading shall include removal of cargo from the truck/trailer and if required placement on pallet boards, transport to, and tiering at, the place of rest within the designated staging area.

7.3.2.1.2. No truck shall be rejected without approval of the Contracting Officer.

7.3.3. Handling and Documentation for Classified/Protected Cargo. Upon receipt of cargo the Contractor must:



7.3.3.1. Accept documents from carrier's truck driver and determine if the driver has a Signature and Tally record, DD Form 1907, (TE-7). If a DD Form 1907 is not available, annotate Load List (LL) and notify CO.

7.3.3.2. Check documents for security stamps and special handling and exception codes, (Classified Code 2, Sensitive Code 4, Pilferable Code 5 and Controlled Code 6).

7.3.3.3. Notify the Contracting Officer immediately when the Contractor becomes aware via documentation that classified, sensitive, or controlled cargo is present in an arriving conveyance to ensure that a Government guard is present. This cargo requires immediate transfer as directed by CO. Transportation shall be arranged by the Contractor.

7.3.3.4. Advise assigned checker if classified, sensitive, or controlled cargo is indicated on DD Form 1907.

7.3.3.5. While in the presence of the guard and Contracting Officer's Representative, ensure that the seal on the truck is intact and the serial number corresponds with the serial number on the documents. Break the seal and proceed to unload the truck.

7.3.3.6. Thoroughly examine cargo to ensure seals are intact and there has been no tampering with boxes or re-coopering. If boxes are strapped to a pallet, count number of boxes on pallet.

7.3.3.7. Receive cargo with special handling code 2, 4, 5, 6 or pilferable cargo and stage in warehouse security cage.

7.3.3.8. In case of discrepancies such as overage, shortage, damage, signs of pilferage, initiate the following actions.

7.3.3.8.1. Immediately cease truck unloading.

7.3.3.8.2. Notify Contracting Officer.

7.3.3.8.3. Hold cargo until the Government Inspector has inspected the cargo and determined disposition.

7.3.3.8.4. Obtain verification of the discrepancy by having the Contracting Officer's Representative annotate the TCMDs and Load List and the truck driver acknowledge by signing the Load List. Annotate all corrections on all documents by circling the incorrect entry and writing the correct entry below it.

7.3.3.9. Upon the unloading of a truck, any cargo which does not have a TCMD and which may be sensitive, controlled or classified, follow the procedures in 7.1.4.4.7.1 in addition to the following.

7.3.3.9.1. Upon arrival of a guard, arrange for loading and transfer of the cargo to the security area (Bldg. 3852).

7.3.3.9.2. Prepare Load List, MTE Form 200, keeping one copy in suspense.

7.3.3.9.3. Send Load List, MTE Form 200, along with cargo.

7.3.3.9.4. Upon return of the tractor driver from Bldg. 3852 match signed TCMD against load list copy in suspense file. If there are no discrepancies, destroy suspense copy. Discrepancies must be brought to the attention of the Contracting Officer immediately.

7.3.4. Truck Loading.

7.3.4.1. General. Loading must include breaking down or untiering of cargo, transporting cargo from place of rest within the designated cargo staging area to the truck, and loading it on to the truck.

7.3.4.2. Truck loading Procedures. The Contractor must:

7.3.4.2.1. Receive carrier's truck by having the driver of the truck report to the warehouse office with a Vehicle Time Check Card, MTE Form 21.

7.3.4.2.2. Stamp the Vehicle Time Check Card with the time the driver reported in and log the truck in on the Daily Arrivals Sheet, MTE Form 32, (TE-11).

7.3.4.2.3. Insure that the carrier's driver has signed all copies of the TCMD and the checker has stamped his name, annotated the Julian date and signed block 27K of the TCMD.

7.3.4.2.4. Stamp the Vehicle Time Check Card with the time the truck finished loading, and complete the Daily Arrivals Sheet.

7.3.4.2.5. Give the driver the remaining copies of the TCMD and the Vehicle Time Check Card.

3.4.2.6. Forward the one copy of the TCMD to the Cargo Operations Division immediately upon completion of loading.

## 8.0 CARGO TRANSPORTER (CONTAINER/MILVAN/FLATRACK OPERATIONS.)

### 8.1. General.

8.1.1. Management. The Contractor must manage the handling, loading (stuffing) and unloading (unstuffing) of cargo transporter compatible cargo. The Contractor is liable to the Government for all loss of and/or damage to cargo or transporter when caused by Contractor negligence.

8.1.1.1. Inspection by the Government. The Government will randomly select cargo transporters IAW MIL-STD-105E for inspection from a group of cargo transporters that have been stuffed and sealed, but, have not yet had shipping documents processed by the Contractor. If no errors are found, the cost of unstuffing and restuffing of cargo transporters, caused by this inspection, will be paid at extra labor rates.

8.1.2. Commodity Services. The following is included in the commodity rates in Schedule IF:

8.1.2.1. Duties such as stuffing and unstuffing cargo, to include clerking, checking and preparing necessary documentation, receiving cargo, palletizing, sorting cargo, segregating cargo, staging cargo, packing, relabeling, marking, shipping and certification of general cargo and hazardous materials, or cargo transporters and the unitizing of loads.

8.1.2.2. Ensure Cargo transporters are not filled with cargo weighing in excess of the indicated maximum weight capacity, or any lesser weight limit determined by the Contracting Officer for specifically identified transporters. Upon notification by the Contracting Officer, the Contractor must remove, or pay the costs of removing, the excess cargo. In the event overweight cargo transporters are released for delivery to the ship operator prior to the discovery of excess weight, the Contractor is liable for any costs, penalties or fines paid by the Government resulting from the moving or handling of the overweight cargo transporters between the place of stuffing and aboard ship.

8.1.2.3. Cargo Transporter movement between the staging (holding) areas and the Contractor's work areas is included in the commodity rates. (Unstuffing/Stuffing point).

8.1.2.4. PLS flatracks without cargo stowed on them are 40m and PLS flatracks with cargo stowed on them are 45 in Section B.

### 8.2. Cargo Transporter Stuffing.

8.2.1. General. The Contractor must plan and supervise container-stuffing operations to assure that:

8.2.1.1. Cargo stuffed in transporters is stowed in a manner that ensures safe arrival of the cargo at the destination and ensure maximum cube utilization of the transporter. Vehicles stuffed into cargo transporters must be so blocked as to ensure that no lateral or longitudinal movement must occur during shipment, considering the projected mode(s) of travel. Blocking, bracing, lashing and securing must be in accordance with FM 55-80 Container Operations and MTMCTEA REF 96-55-23, Containerization of Military Vehicles.

8.2.2.2. The cargo transporter weight capacity must not be exceeded and cargo weight shall be equally distributed within the cargo transporter. Cargo in cargo transporters must be blocked, braced or lashed, as necessary.

8.2.2.3. The Contractor must comply with the provisions of applicable Dangerous/Hazardous Cargo Regulations (IMDGC Title 49 CFR) when stuffing dangerous cargo, and segregate, sort, stage, label and execute required certificates and prepare Dangerous Cargo Load Lists.

8.2.2.4. The Contractor must stuff hazardous cargo last, into the tail end of the cargo transporter.

8.2.2.5. The Contractor must stuff cargo transporters to maintain shipment integrity, and provide necessary supervision to ensure same.

8.2.2.6. The Contractor must maintain security of cargo while stuffing. When it is necessary to stop stuffing prior to completion, cargo transporter doors must be closed and sealed until loading can be resumed.

8.2.2.7. Transporters will be marked and/or tagged in accordance with Defense Transportation Regulation (DTR) procedures and MTMCTEA REF 96-55-23.

8.2.2.8. The Contractor must, in accordance with IMDGC Title 49 CFR, apply appropriate labels and/or placards to the outside of all four sides of each cargo transporter for loads containing hazardous cargo.

8.2.2.9. Payment for the stuffing of cargo transporters includes all operations, material and equipment necessary to stuff the cargo and the operation include dunnaging, blocking, bracing, marking, labeling, sealing, tagging, and documentation.

8.2.2.10. Seals must be applied by checkers to transporter's doors. Seal application record IAW 841<sup>st</sup> Seal SOP logs must be maintained by the 841<sup>st</sup> US Army Transportation Battalion in accordance with the 841<sup>st</sup> US Army Transportation Battalion SOP 55-72.

8.2.3. Procedures. The Contractor must:

8.2.3.1. Identify shipments to be stuffed using the WPS generated On-Hand Cargo Listing as the basic planning tools.

8.2.3.2. Check the cargo transporter prior to loading to ensure that it is free of debris and does not contain holes that would expose the cargo to damage. The Contractor must reject the cargo transporter if it is not suitable for loading.

8.2.3.3. Identify shipments to be stuffed and move cargo from place of rest to the cargo transporter or pre-staging area near the cargo transporter.

8.2.3.4. Stuff the cargo transporter, ensuring that all preplanned cargo is loaded. Remove the appropriate TCMD from the cargo and ensure that the cargo loaded in the cargo transporter matches the documents pulled.

8.2.3.5. For partial shipments, retain the one copy of TCMD or prepare a split envelope as the load document and annotate on the TCMD the number of pieces, weight and cube loaded, cargo transporter number and "A" number. One copy of the TCMD for partial shipment must be affixed to the cargo remaining on-hand.

8.2.3.6. Prepare a Dangerous Cargo Load List, DD Form 2776 (TE-8), for all dangerous cargo loaded.

8.2.3.7. Annotate seal number(s) on the cargo transporter TCMD.

8.2.3.8. Upon completion of stuffing:

8.2.3.8.1. Insure that one copy of each content TCMD is attached to the cargo transporter TCMD for each cargo transporter unless a partial cargo transporter is involved, in which case a second TCMD or split envelope shall be attached to the cargo transporter TCMD.

8.2.3.9. Place an envelope containing a copy of each content TCMD inside the cargo transporter, and apply seals to cargo transporter door(s). Placard and label cargo transporter as appropriate.

8.2.3.10. Give the original cargo transporter TCMD with attached content TCMD's to Cargo Operations personnel.

8.2.4. Shipping of Classified, Controlled or Sensitive Cargo via cargo transporter. The Contractor must:

8.2.4.1. Position the cargo transporter and advise the Contracting Officer that the cargo transporter is ready for stuffing.

8.2.4.2. In the presence of the Government Representative, receive and examine the cargo and accompanying documents at the cargo transporter-loading site. Insure that the number of cargo transporters or pallets are accurately reflected on the documentation. On palletized cargo, count the number of cargo transporters or pallets and annotate on the Load List the number of boxes, cargo transporters, on the pallet.

8.2.4.3. Insure that the shipping cargo transporters are properly stenciled or labeled in accordance with DTR / MTMC TEA REF 96-55-23.

8.2.4.4. If there are no discrepancies, sign accompanying Load List and give it to Cargo Operations Division.

8.2.4.5. The cargo must be loaded into the cargo transporter from the transferring vehicle immediately. Cargo must NOT be placed on the floor.

8.2.4.6. Insure that a copy of the Load List is taped or otherwise secured to the inside right hand door of the cargo transporter. Close and seal both doors.

8.2.4.7. The cargo transporter must then be staged in a secure area designated by the Government.

8.2.5. CONEX / MULTIWALL / ISU Container Loading. The Contractor must:

8.2.5.1. Obtain TCMD's from the Operations Division; load cargo in the cargo transporter as indicated on the TCMD's. Each MULTIWALL container must be capped in order to secure all four sides and to protect the material from strap tensions. MULTIWALL containers shall be banded, using 4 each strips of a minimum of 5/8" banding to secure the containers. A CONEX container must be stenciled with shipment markings on four sides and a MULTIWALL on two sides. The address plates must be stenciled by the Contractor as follows: TCN, Project, Required Delivery Date (RDD), from: (POE), to: (POD), ultimate consignee or mark for consignee (in the clear), pieces, weight, and cube.

8.3. Transporter Unstuffing.

8.3.1. General.

8.3.1.1. The Contractor must receive from the Government a daily listing of transporters received. The Contractor must coordinate all unstuffing operations with the Contracting Officer. In the event that cargo documentation is not made available to the Contractor, the transporter must be discharged when directed by the Contracting Officer and the Contractor must prepare receipt documents. The Contractor must, not later than 4:00 PM daily, notify Cargo Operations Division in writing of containers received that day without documentation.

8.3.2. When directed by the Contracting Officer, the Contractor must assist the Agriculture Department during required Agriculture inspections, reimbursement will be IAW Schedule B Man-Hour rates.

8.3.3. Procedures. The Contractor must discharge and process retrograde (import) cargo received in cargo transporters as follows:

8.3.3.1. Acknowledge receipt of the loaded cargo transporter by annotating the Julian date received and affixing checker signature on the TCMD.

8.3.3.2. Verify the seal number on the prime TCMD against the seal on the transporter. Any discrepancy shall be reported to the Government and annotated on the prime TCMD for the transporter.

8.3.3.3. Forward one copy of the TCMD to the Cargo Operations Division.

8.3.3.4. Give the remaining copies of the prime TCMD for the cargo transporter and the content TCMDs to the checker assigned to unstuff the van.

8.3.3.5. Discharge the cargo transporter of all cargo, identifying the cargo by comparing the TCN on the cargo to the TCN on the top line of the content TCMD, and inspecting the cargo for quantity and condition.

8.3.3.6. Move the cargo to a place of rest, insuring that cargo with special handling codes 2, 4, 5, 6 or any pilferable cargo is staged in the security crib or vault area, as applicable.

8.3.3.7. If no exceptions are noted, receive the cargo and verify the shipment receipt on all copies of the documentation (content TCMD) as follows:

8.3.3.7.1. Enter the Julian date received in block 25b on the TCMD.

8.3.3.7.2. Enter complete staging location of cargo in block 25c.

8.3.3.7.3. Stamp or print checkers name in block 25k and affix "checker's signature".

8.3.3.7.4. If the cargo is Personal Property (HHGs or baggage) and the member's name, rank and social security number are not present, annotate them in the remarks area of the TCMD.

8.3.3.7.5. Pull one copy of the TCMD, place it in a clear plastic envelope and secure the envelope to the cargo.

8.3.3.8. If exceptions are noted, receive the cargo and verify shipment receipt on all copies of the TCMD as follows:

8.3.3.8.1. When the discrepancy is due to damage and/or pilferage, notify the Contracting Officer. When authorized by the Contracting Officer proceed with the receiving operation in the same manner as for shipments with no exceptions, except that the damage and/or pilferage must be annotated on all copies of the TCMD and, prior to moving the cargo to its final place of rest, the Contractor must obtain the signature of the Government Inspector authenticating the report.

8.3.3.8.2. When the discrepancy is due to "no documentation", prepare a handwritten receipt, TCMD, for the shipment IAW Defense Transportation Regulation DOD 4500.9R.

8.3.3.8.3. For all other discrepancies, circle the incorrect data and write the correct data directly below the circled entry on all copies of the TCMD. All discrepancies in pieces, weight, and cube must be verified by the Government on the TCMD. Proceed with receiving operations as specified for shipments with no exceptions.

8.3.3.9. Distribute the Individual Content TCMDs as follows. The Contractor must:

8.3.3.9.1. Pull two copies of the content TCMDs.

8.3.3.9.2. Balance of the content TCMDs for the cargo transporter must remain with the cargo.

8.3.3.10. After unstuffing the cargo transporter, the remaining documents must be returned to the receiving clerk. The transporter must be cleaned of all trash and debris (e.g., chocks, blocks, nails, strapping, paper.).

## 9.0 CONTAINER MILITARY VEHICLES STUFFING - UNSTUFFING.

### 9.1. General.

9.1.1. The Contractor must, at his own expense, provide all necessary transportation of labor, supervision, labor, materials and Materiel Handling Equipment (MHE) to safely and properly stuff vehicles/cargo into containers and seal the containers with the seals furnished by the Government and as required, apply Warning Placard label, MTE Label 15 (TE-9). When unstuffing the transporters the procedure is reversed. The equipment required for performance of the services includes, but is not limited to, a mobile air pumping unit (or portable air tank) for inflating flat tires. If tires cannot be inflated or repaired, at the direction of the Contracting Officer, tires must be replaced with reimbursement at out-of-pocket cost.

9.1.2. Spotting and unspotting containers. Positioning and removing of containers ready for stuffing/unstuffing must be the responsibility of the Contractor.

9.1.3. The Contractor must stuff or unstuff cargo (vehicles) at place of rest into or out of containers, which shall include all necessary chocking, bracing, and dunnaging of vehicles in containers. Lumber and material must be of grades suitable for the specific use intended and of a quality acceptable to the Contracting Officer.

9.1.4. The Contractor must inspect and observe the vehicles during the stuffing/unstuffing operations to report damages and missing items not previously recorded or annotated on the DD Form 788 or DD Form 1384 TCMD. The checker during the stuffing operations must:

9.1.4.1. Identify discrepancies on the TCMD when accepting vehicles. The TCMD must be annotated with the applicable code for that inspection phase and a brief description of the damages shall be made.

9.1.4.2. Insure that the vehicle is properly processed for the destination, that is, fuel tanks contain no more than one quarter (1/4) of a tank of gas or three quarters (3/4) of a tank of diesel fuel.

9.1.4.3. Insure that battery cables have been disconnected and electrical ends of cable are taped and then taped to the vehicle structure.

9.1.4.4. Insure that keys are securely fastened to the key tag and left in the ignition.

9.1.4.5. Insure vehicle is properly secured in the van (see 9.1.3).

9.1.4.6. One (1) copy of the van TCMD will be forwarded to the Documentation Branch. Original and one copy of TCMD will remain on vehicle.

9.1.4.7. Retain one reproduced legible copy of the DD Form TCMD.

9.1.4.8. Military Vehicles - Identify any discrepancies not previously recorded and enter brief description in the body of the TCMD (DD Form 1384-2). Complete the appropriate blocks by entering the container number, seal number, date shipped, vessel name and voyage document number. One copy of the TCMD must be attached to the van TCMD and forwarded to the Documentation Branch.

9.1.4.8.1. The procedures in paragraphs 9.1.4., 9.1.4.2., 9.1.4.3., 9.1.4.4., and 9.1.4.5. apply to this operation.

9.1.5. The checker during the vehicle unstuffing operations must:

9.1.5.1. Observe the condition of the vehicles being unstuffed and:

9.1.5.1.1. Inspect the vehicle to determine condition and annotate the TCMD with any exceptions not previously recorded with the appropriate symbol for that inspection phase. Date and print name in appropriate block.

9.1.5.1.2. Reconnect battery, place key in ignition, check clock, radio, heater and other items indicated. If items are missing annotate TCMD, accordingly.

9.1.5.1.3. Perform a joint inspection upon discharge of the vehicle.

9.1.5.2. Immediately inspect vehicle upon removal from the van and enter damages and pilferages, not previously recorded, on the TCMD DD Form 1384. Date and sign the appropriate blocks.

9.1.5.3. Stage vehicles as directed by the Contracting Officer.

9.1.5.4. The Contractor is be accountable for damage or loss incurred while the vehicle is in the Contractor's custody. Under no circumstances is a vehicle to be released if it does not have clearance from Customs and USDA. If such a vehicle is released the Contractor may be held liable for any fines incurred.

9.1.5.5. Wash Vehicles. The Contractor must wash vehicles when requested by the Contracting Officer in accordance with Department of Agriculture Regulations. The Contractor must rid vehicles of residue deposits of industrial waste and other foreign matter when directed by the Contracting Officer. Compensation for this service will be IAW Schedule B Man-Hour Rates.

9.2. Preparing Government Vehicles For Shipment, to include Vessel, Barge, Truck, Rail and Cargo Transport Loading. The Contractor must perform the services listed below, which are included in the applicable commodity rates.

9.2.1. Reduce cube as directed and when necessary remove accessories. Secure windshield when required.

9.2.2. Disconnect battery cables, tape/cap battery terminal (posts), tape ends of battery cables and tape both cables to the vehicle structure.

9.2.3. Control and Disposition of Drained Fuel from Government Vehicles. Determine from vehicle specifications the capacity of the fuel tank and drain diesel fuel if the amount exceeds one hundred ten (110) gallons. Drain gasoline from the fuel tank and run engine to exhaust the remaining fuel supply. This service must include the placing and segregating of diesel fuel and gasoline in the Contractor owned containers.

9.2.4. Preparation of Tracked Vehicles for Shipment must include the following processes:

9.2.4.1. Open the hatch cover.

9.2.4.2. Connect master battery relay cable from inside the vehicle.

9.2.4.3. Check fuel and add fuel or defuel, if required. Diesel fuel must not be drained unless the amount in the tank exceeds one hundred ten (110) gallons.

9.2.4.4. Test the braking and steering system.

9.2.4.5. Start the vehicle and drive to appropriate staging area.

9.2.4.6. Insure that all loose equipment is secured and replace broken strapping, if required.

9.2.4.7. Disconnect master battery relay cable at shipside, as required and tape to the vehicle structure.

9.2.4.8. When required on tracked vehicles, e.g., M-1 tanks, the Contractor must disconnect battery cables and secure vehicle in cargo storage areas and reconnect battery cables for movement to shipside. After vehicle is stowed aboard ship the Contractor must ensure: all hatches are secured in a closed position; the loaders hatch is secured by means of a Trans-Lok Seals; and all drain valves are in the open position. The following openings: (air intake port), pre-cleaner doors, top deck left grill doors, engine access cover and top deck right grill doors must be covered with Class 3 barrier material (Government furnished).

## 10.0 EXTRA LABOR (general).

10.1. Extra Labor. When ordered by the Contracting Officer, the Contractor must supply extra labor for miscellaneous services within the scope and intent of the contract. Unless services are occasioned by the fault or negligence of the Contractor, the Contractor will be compensated for such services on a man-hour basis (Schedule II). Among the miscellaneous services for which extra labor may be required are: cleaning ships' holds and decks; handling excess dunnage and debris; handling cabin baggage; removing or securing tank lids when secured by more than four (4) bolts for each lid; handling ship's stores and materials; dunnaging over cargo loaded elsewhere; or lashing and securing, including blocking of cargo loaded directly from ship to railcar, barge or truck import cargo.

10.2. Coopering and Marking. As ordered by the Contracting Officer, the Contractor must cooper and mark cargo and will be compensated at the applicable man-hour rates, except when coopering or marking is made necessary by the negligence of the Contractor or his employees.

10.3. Welding and Burning. When ordered by the Contracting Officer, the Contractor must furnish welding and burning equipment, services and materials, compensation for which is included in the man-hour rates.

10.4. Transportation under Threat Condition Alpha (AR 190-13), the Contractor must, with compensation included in the commodity rate, provide for transportation of his employees between the stevedore gate and work sites as a routine duty.

10.5. Shifting of Barges, Lighters, Scows and Carfloats. When operational conditions make movement by ship's gear impracticable, the Contractor must furnish personnel to perform the shifting of barges, lighters, scows and carfloats at the direction of the Contracting Officer as a non-routine duty and shall be compensated at the applicable rates set forth in Schedule IV. The Contractor must utilize personnel from available ship's gang to handle lines when barges, etc., are placed alongside. When barges, etc., are shifted from hatch to hatch, the Contractor must do so at his own expense unless operational conditions make movement by ship's gear impracticable, in which event the operation shall be at the expense of the Government. The costs, including detention time, for turning barges around with a tug for the convenience of the Contractor will be borne by the Contractor.

## 11.0 APPLICABLE DOCUMENTS.

Certain Government directives are required for performance under the contract and will be made available for the Contractor use, with the exception of CFR's, IMO and IATA regulations for which the Contractor is responsible for acquiring. The Contractor must comply with their provisions and the Government will provide changes thereto. The Contractor must maintain these directives in a current status upon receipt of change. Supplements and amendments to these directives shall be considered to be in full force and effect immediately upon receipt by the Contractor, unless there is a cost impact. If there is a cost impact, the effective date must be that stated in the change order or contract modification issued concerning the supplements and amendments. See below for listing of applicable documents.

### 11.1. Regulations and Publications.

AR 55-1 - "CONEX/MILVAN Equipment Control Utilization & Reporting"

AR 190-11 - "Physical Security of Arms, Ammunition, and Explosives"



AR 385-10 - "The Army Safety Program"

AR 600-55 - "Motor Vehicle Driver and Equipment Operator Selection, Training, Testing, and Licensing"

MTMCEA REG 55-36 w/4 changes - "Lashing, Securing and Chocking of Wheeled Vehicles and Other Cargo Stowed in MSC Procured Vessels,"

MTMCEA REG 55-41 - "Load List"

MTMCEA REG 385-1 - "Personal Protective Clothing & Equipment"

MTMCEA REG 385-4 - "Safety Hazardous Materials Movement Program"

MTMCEA REG 420-3 - "Fire Prevention and Protection - Repairs and Utilities"

MTMCEA PAM 37-1 "Financial Administration"

MTMCR 37-10 - "Contract Payment (MTMC-FM-16- (R-17))"

MTMCR 55-38 - "Transportation & Travel - Reporting of Transportation Discrepancies in Shipments"

MTMCR 56-69 - "Transportation, Travel, Terminal Operations"

MTMCR 190-1 - "MTMC Security Program"

Joint Travel Reg., Vol. 2

Safety & Health Regulations for Longshoring

#### 11.2. Publications

DoD Regulation 4500.9R, Defense transportation regulation

DoD Regulation 4145.19-R-1, Storage and Materials Handling

DoD 5100.76M, Physical Security of Sensitive Conventional Arms, Ammunition and Explosives

Federal Acquisition Regulation (FAR), DOD Far Supplement, and Army FAR Supplement

MTMCEA REG 55-1 - "Inventory Control of Cargo"

AR 190-13 - "The Army Physical Security Program"

AR 190-22 - "Military Police: Searches, Seizures, and Disposition of Property"

AR 190-29 - "Misdemeanors and Uniform Violation Notices Referred to US Magistrate or District Courts"

AR 190-50 - "Physical Security for Storage of Controlled Medical Substances and Other Medically Sensitive Items"

AR 190-51 - "Security of Army Property at Unit and Installation Level"

AR 385-40 - "Safety Reporting"

AR 385-55 - "Prevention of Motor Vehicle Accidents"

AR 710-2 - "Inventory Management,"

AR 725-50 - "Requisitioning: Receipt and Issue System,"

AR 735-5 - "Property Accountability,"

Code of Federal Regulations, Parts 100-199 (Transportation), Dangerous/Hazardous Cargo Title 49

Code of Federal Regulations, 29 CFR, Part 1910, Occupational Safety & Health

Code of Federal Regulations, 29 CFR, Part 1918, Longshoring

Code of Federal Regulations, 46 CFR, Part 146, Shipping

Code of Federal Regulations, 29 CFR, Part 4, Reg. of Sec of Labor

Code of Federal Regulations, Title 22 (CFR-33) Parts 1-199

FM 55-80 – Container Operations

TM-55-2220-058-14, Transportation Guidance Tank, Combat, Full-Track, 105-MM Gun, MI

TB-55-46-1 – Standard Vehicle Characteristics

MIL-STD-129H Marking for Shipment and Storage

MIL-STD-105-E w/change 2, Sampling Procedures and Tables for Inspection by Attribute

MTMCTEA REF 97-55-22 - Marine Lifting and Lashing

MTMCTEA REF 97-55-23 - Containerization of Military Vehicles

Container Inspection Handbook for Commercial and Military Intermodal Containers

841st SOP 55-72 Use and Control of Seals

Naval Weapons Station Instruction 5512.3A, Personnel Identification Badge, Vehicle Pass, and Entry Procedures for WPNSTACHASN and POMPLANT.

NAVFAC P-307 – Management of Weight Handling Equipment

11.3. Forms/Technical Exhibits (TE). See Attachments.

12. ADDITIONAL PROVISIONS FOR WORK TO BE PERFORMED IN SAVANNAH, GA. As required, the Contractor must perform stevedoring and related terminal services work at Savannah, Georgia. Planning for Savannah operations is to be done at Charleston. Compensation to Contractor shall be IAW Schedule B, Schedule of Rates.

12.1. All standard military equipment not requiring special operating skills must be driven by the Contractor and all equipment requiring special skills, i.e., HETTS (M10170/M1000) and all track vehicles over 50,000 pounds or that equipment so directed by the Contracting Officer must be driven by a qualified Contractor driver or military driver (no shotgun riders)."

12.2. LOGMARS Concept. See paragraphs 5.3.8. through 5.3.8.2.

### 13. Additional Instructions for Submission of Invoices.

13.1. Invoices must be submitted on a weekly basis not later than five days after receipt of tonnage figures (CCV/DPR) or Manifest). The Contractor must submit separate invoices for each ship worked, further separated by the commodity work and man-hour work relating to each ship.

13.2. All commodity invoices must reference the pertinent Cargo Commodity Vessel /Dock Payment Reports (CCV/DPR) by page number and Julian Report Production Date, Man-hour invoices must specify extra labor, detention time, minimum time, overtime differential, equipment rental, handling lines and out-of-pocket costs for materials as appropriate.

13.3. Invoices for terminal (dock) activity must be submitted separately.

13.4. Invoices for Guaranteed Annual Income and tonnage assessments must cross-reference such claims to relevant previously paid invoices. Each claim invoice must pertain to only one previously paid invoice and must reference the initial invoice number and disbursing office voucher number on which paid. The difference for each line item will be computed and annotated on each invoice.

13.5. Final invoices must be submitted within 180 days of contract completion.

### End of Section

## Part II – Terms and Conditions

### 52.212-4 -- Contract Terms and Conditions—Commercial Items.

(Feb 2002)

(a) *Inspection/Acceptance.* **SEE ADDENDA TO 52.212-4**

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (*e.g.*, use of the Government wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* **SEE ADDENDA TO 52.212-4**

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or

negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence. The Contractor must also notify the Contracting Officer in writing, as set forth above, when service is expected to be delayed.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

- (1) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent,

trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

- (i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
  - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
- (k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.
- (l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

- (o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (p) *Limitation of liability.* Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- (r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- (s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
  - (1) The schedule of supplies/services.
  - (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
  - (3) The clause at 52.212-5.
  - (4) Addenda to this solicitation or contract, including any license agreements for computer software.
  - (5) Solicitation provisions if this is a solicitation.
  - (6) Other paragraphs of this clause.
  - (7) The Standard Form 1449.
  - (8) Other documents, exhibits, and attachments.
  - (9) The specification.

**(End of Clause)**

#### **ADDENDA TO FAR 52.212-4**

***(a) Inspection/Acceptance.***

- (1) Inspection and acceptance will be performed at the MTMC 841st U.S. Army Transportation Battalion, Naval Weapons Station South, North Charleston, South Carolina and the Charleston Naval Weapons Station, Naval Weapons Station South, and all South Carolina State Port Authority facilities within the Greater Charleston area, and facilities of the Georgia Port Authority, Savannah State Docks (Garden City Terminal and Ocean Terminals). The Contractor's performance of services and compliance to the specifications cited herein shall be subject to inspection by the Government in accordance with this section. The Contractor

must cooperate fully with Government representatives who will conduct quality assurance inspections of all aspects of services provided under this contract.

- (2) Commodity and miscellaneous services performed by the Contractor will be verified and accepted by the Contracting Officer by certification of the Cargo Commodity Vessel/Dock Payment Report (CCV/DPR) and Timekeeper's Activity Report, MT Form 271.
- (3) The Performance Requirements Summary, included herein, describes the contract requirements considered most critical to performance. They establish the standard for satisfactory performance, explain Government quality surveillance methods used to evaluate Contractor's performance, describe the actions the Government will take to assure satisfactory performance. See Performance Requirements Summary (PRS), Part VI, Attachments.
- (4) Government Quality Assurance Procedures
  - a. The Government's primary quality assurance inspection procedures are based on the use of Cargo Inventory Reports. Some areas will be inspected by the use of Cargo Discrepancy reports. Other areas will be physically inspected periodically (daily, weekly, monthly).
  - b. The methods for determining whether contractor's performance is acceptable when compared to the performance standards of the contract are as follows:

For areas surveyed by sampling, lot size and sample size will be determined using the guidelines of MIL-STD-105E. Results of inspections will be compared to the acceptable quality level criteria for each contract requirement listed in the Performance Requirements Summary.

Statistical data provided cargo management reports will be compared to the criteria described in the Performance Requirements Summary.

***(c) Changes***

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

- 1) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - (a) Specifications.
  - (b) Work or services.
  - (c) Place of origin.
  - (d) Place of delivery.

- (e) Tonnage to be shipped.
  - (f) Amount of Government-furnished property.
- (2) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.
- (3) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (4) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer will have the right to prescribe the manner of the disposition of the property.
- (5) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items. (May 2002)**

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755);
- (2) 52.233-3, Protest after Award (31 U.S.C 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

*[Contracting Officer shall check as appropriate.]*

- \_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).
- \_\_\_ (2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).
- \_\_\_ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).
- \_\_\_ (4) (i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
  - \_\_\_ (ii) Alternate I to 52.219-5.
  - \_\_\_ (iii) Alternate II to 52.219-5.
- \_\_\_ (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).



- \_\_\_ (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).
- \_\_\_ (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- \_\_\_ (8) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- \_\_\_ (ii) Alternate I of 52.219-23.
- \_\_\_ (9) 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (10) 52.219-26, Small Disadvantaged Business Participation Program-Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- X (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- X (12) 52.222-26, Equal Opportunity (E.O. 11246).
- X (13) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- X (14) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- X (15) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- X (16) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (E.O. 13126).
- \_\_\_ (17)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).
- \_\_\_ (ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- \_\_\_ (18) 52.225-1, Buy American Act--Supplies (41 U.S.C. 10a-10d).
- \_\_\_ (19)(i) 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
- \_\_\_ (ii) Alternate I of 52.225-3.
- \_\_\_ (iii) Alternate II of 52.225-3.
- \_\_\_ (20) 52.225-5, Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- \_\_\_ (21) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
- \_\_\_ (22) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- \_\_\_ (23) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- X (24) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (31 U.S.C. 3332).
- \_\_\_ (25) 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (31 U.S.C. 3332).
- \_\_\_ (26) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- \_\_\_ (27) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- \_\_\_ (28) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

\_\_\_ (ii) Alternate I of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer check as appropriate.]

X (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

X (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

X (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

X (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components --

(1) 52.222-26, Equal Opportunity (E.O. 11246);

- (2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);
  - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);
  - (4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and
  - (5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).
- (End of Clause)

**52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION  
OTHER THAN COST OR PRICING DATA—MODIFICATIONS ALTERNATE IV  
(OCT 1997)**

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below:
  - (1) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
  - (2) For a commercial item, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—
    - (i) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
    - (ii) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
    - (iii) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
  - (3) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of

price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(End of clause)

#### **52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a Fixed Price Requirements contract resulting from this solicitation.

(End of clause)

#### **52.216-18 ORDERING (OCT 1995)**

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from 01 January 2003 through 30 June 2005.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

#### **52.216-19 -- Order Limitations (Oct 1995)**

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$10.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) Maximum order. The Contractor is not obligated to honor --
  - (1) Any order for a single item in excess of \$TBD;
  - (2) Any order for a combination of items in excess of \$TBD; or
  - (3) A series of orders from the same ordering office within 10 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 3 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

**52.216-21 -- Requirements (Oct 1995)**

- (a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.
- (d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.
- (e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 31 December 2005 [insert date].

(End of Clause)

**52.217-8 -- Option to Extend Services (Nov 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised

more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within or at any time prior to expiration of the contract.

**(End of Clause)**

**52.222-41 -- Service Contract Act of 1965, as Amended (May 1989)**

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)

(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any

contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)

(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted

employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length



negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract.

The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act --

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of payments and termination of contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's certification.

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the

Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub.L.92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by

the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision --

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

#### **52.222-42 -- Statement of Equivalent Rates for Federal Hires (May 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only:

It is not a Wage Determination Employee Class

Category	Monetary Wage -- Fringe Benefits
Longshoreman	\$11.17
Clerk	\$10.71
Supervisor (Clerk)	\$11.98
Carpenter	\$11.17
Carpenter Foreman	\$17.04
Lasher	\$11.17
Lasher Foreman	\$17.04
Clerk Checker	\$ 9.54
Terminal Worker	\$10.71

(End of Clause)

**52.222-43 -- Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (May 1989)**

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
  - (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
  - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records,

that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of Clause)

**52.222-47--Service Contract Act (SCA) Minimum Wages and Fringe Benefits  
(May 1989)**

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor Stevens Shipping & Terminal Company and the International Longshoremen's Association (ILA) (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of Clause)

**52.228-5 -- Insurance -- Work on a Government Installation (Jan 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective --

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of Clause)

## **52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

## **52.246-25 -- Limitation of Liability -- Services (Feb 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that --

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of

--

(1) All or substantially all of the Contractor's business;



(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of Clause)

### **52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—

- (1) Furnish phase- in training; and
- (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase- in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase- in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase- in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

#### **52.245-1 -- PROPERTY RECORDS (APR 1984)**

The Government shall maintain the Governments official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

#### **52.245-4 -- GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)**

- (a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government- furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when—
  - (1) The Contractor submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- (b) Title to Government- furnished property shall remain in the Government. The Contractor shall use the Government- furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.
- (c) Upon delivery of Government- furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except—
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing this contract; or
  - (3) As otherwise provided for by the provisions of this contract.
- (d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.
- (d) If this contract is to be performed outside the United States of America, its territories, or possessions, the words “Government” and “Government- furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government furnished,” respectively.

(End of clause)

#### **52.247-5 FAMILIARIZATION WITH CONDITIONS (APR 1984)**

The offeror shall become familiar with all available information regarding difficulties that t may be encountered and the conditions, including safety precautions, under which the work must be accomplished under the contract. The offeror shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required in this contract because the offeror failed to investigate the conditions or to become acquainted with all information concerning the services to be performed.

(End of clause)

#### **52.247-8 ESTIMATED WEIGHTS OR QUANTITIES NOT GUARANTEED (APR 1984)**

The estimated weights or quantities are not a guarantee of actual weights or quantities, as the Government does not guarantee any particular volume of traffic described in this contract. However, to the extent services are required as described in this contract and in accordance with the terms of this contract, orders for these services will be placed with the Contractor.

(End of clause)

#### **52.247-12 SUPERVISION, LABOR, OR MATERIALS (APR 1984)**

The Contractor shall furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the services contemplated under this contract in an orderly, timely, and efficient manner.

(End of clause)

#### **52.247-14 CONTRACTOR RESPONSIBILITY FOR RECEIPT OF SHIPMENT (APR 1984)**

The Contractor shall diligently count and examine all goods tendered for shipment, receipt for them, and make appropriate written exception for any goods not in apparent good order.

(End of clause)

#### **52.247-21 CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE (APR 1984)**

- (a) The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.
- (b) The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance during the continuance of this contract, insuring the Contractor against all claims for injury or damage.
- (c) The Contractor shall maintain Workers' Compensation and other legally required insurance with respect to the Contractor's own employees and agents.
- (e) The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other

equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

**52.247-27 CONTRACT NOT AFFECTED BY ORAL AGREEMENT (APR 1984)**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of clause)

**52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any N/A (48 CFR N/A) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of clause)

**252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)**

(a) Definition. “Contracting Officer's Representative” means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a Contracting Officer's Representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

**252.204-7004 Required Central Contractor Registration. (NOV 2001)**

- (a) *Definitions.* As used in this clause-

- (1) “Central Contractor Registration (CCR) database” means the primary DoD repository for contractor information required for the conduct of business with DoD.
  - (2) “Data Universal Number System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.
  - (3) “Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.
  - (4) “Registered in the CCR database” means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.
- (b)
- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.
  - (2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
  - (3) Lack of registration in the CCR database will make an offeror ineligible for award.
  - (4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.
- (f) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.
- (End of clause)

**252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR  
EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL  
ITEMS (APR 2002)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

  X   52.203-3                      Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

<u>      </u>	252.205-7000	Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
<u>      </u>	252.206-7000	Domestic Source Restriction (DEC 1991) (10 U.S.C. 2304).
<u>      </u>	252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).
<u>      </u>	252.219-7004	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).
<u>      </u>	252.225-7001	Buy American Act and Balance of Payments Program (MAR 1998) (41 U.S.C. 10a-10d, E.O. 10582).
<u>      </u>	252.225-7007	Buy American Act--Trade Agreements--Balance of Payments Program (SEP 2001) (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).
<u>      </u>	252.225-7012	Preference for Certain Domestic Commodities (APR 2002) (10 U.S.C. 2533a).
<u>      </u>	252.225-7014	Preference for Domestic Specialty Metals (MAR 1998) (10 U.S.C. 2533a).
<u>      </u>	252.225-7015	Preference for Domestic Hand or Measuring Tools (DEC 1991) (10 U.S.C. 2533a).
<u>      </u>	252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (DEC 2000) ( <u>      </u> Alternate I) (DEC 2000) (Section 8064 of Pub. L. 106-259).
<u>      </u>	252.225-7021	Trade Agreements (SEP 2001) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

- \_\_\_\_\_ 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).
- \_\_\_\_\_ 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (DEC 1991) (22 U.S.C. 2755).
- \_\_\_\_\_ 252.225-7029 Preference for United States or Canadian Air Circuit Breakers (AUG 1998) (10 U.S.C. 2534(a)(3)).
- \_\_\_\_\_ 252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program (MAR 1998) (\_\_\_\_ Alternate I) (SEP 1999) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- \_\_\_\_\_ 252.227-7015 Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
- \_\_\_\_\_ 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- \_\_\_\_\_ 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- \_\_\_\_\_ 252.247-7023 Transportation of Supplies by Sea (MAR 2000) (\_\_\_\_ Alternate I) (MAR 2000) (\_\_\_\_ Alternate II) (MAR 2000) (10 U.S.C. 2631).
- \_\_\_\_\_ 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2533a).
- 252.247-7023 Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

**252.242-7000 -- POST AWARD CONFERENCE (DEC 1991)**

The Contractor agrees to attend any post award conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

(End of clause)

#### **252.243-7001 -- PRICING OF CONTRACT MODIFICATIONS (Dec 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost principles and the procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(End of clause)

#### **252.243-7002 -- REQUESTS FOR EQUITABLE ADJUSTMENT (Mar 1998)**

- (a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.
- (b) In accordance with 10 U.S.C.2410 (a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

*I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.*

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(Official's Name)

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(Title)

- (c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—
  - (1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and
  - (2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.
- (d) The certification requirement in paragraph (b) of this clause does not apply to—
  - (1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
  - (2) Final adjustments under an incentive provision of the contract.

(End of Clause)

#### **252.247-7000 -- Hardship Conditions (Aug 2000)**

- (a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—



- (1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and
  - (2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.
- (b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.
- (c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.
- (End of Clause)

#### **252.247-7002 REVISION OF PRICES (DEC 1991)**

- (a) "Definition. Wage adjustment", as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—
- (1) Substantially affects the cost of performing this contract;
  - (2) Is generally applicable to the port where work under this contract is performed; and
  - (3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.
- (b) "General." The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.
- (c) "Demand for negotiation."
- (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.
  - (2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90-day period.
  - (3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.
    - (i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.
    - (ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

- (d) "Submission of data." At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—
- (1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;
  - (2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;
  - (3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;
  - (4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and
  - (5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.
- (d) "Negotiations."
- (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.
  - (2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.
  - (3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.
- (f) "Disagreements." If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.
- (g) "Retroactive changes in wages or working conditions."
- (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.
  - (2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—
    - (i) An estimate of the changes in cost resulting from the retroactive wage adjustment;
    - (ii) Complete information upon which the estimate is based; and
    - (iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.
  - (3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph of this clause.

- (4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.
  - (5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.
- (End of clause)

#### **252.247-7006 REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC 1991)**

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

#### **252.247-7007 LIABILITY AND INSURANCE (DEC 1991)**

(a) The Contractor shall be—

- (1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;
- (2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and
- (3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

- (1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.
- (2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.
  - (a) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—
    - (1) The un-seaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and
    - (i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such un-seaworthiness or defect of gear or equipment; or

- (iii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.
  - (2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.
- (d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—
  - (1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.
    - (i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).
    - (ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.
  - (2) Bodily injury liability insurance in an amount of not less than \$300,000 on account of any one occurrence.
  - (3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than \$300,000 for any one occurrence.
- (e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.
- (f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.
- (g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.
- (h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.
  - (i) The Contractor shall—
    - (1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;
    - (2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and
    - (4) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining

recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

## **ADDENDUM to PART II- CONTRACT TERMS AND CONDITIONS**

### **CONFLICT OF INTEREST**

- (a) General. Subpart 9.5 of the Federal Acquisition Regulation, 48 C.F.R. 9.5, prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest. Additional guidance is contained in Office of Federal Procurement policy Letter 89-I, Conflict of Interest Policies Applicable to Consultants.
- (b) Purpose. The purpose of this clause is to avoid, neutralize, or otherwise mitigate organizational conflicts of interest which might exist related to a Contractor's performance of work required by this contract. Such conflicts may arise in situations including, but not limited to: a Contractor's participation, as an Offeror or representative of an offeror, in a procurement in which it has provided assistance in the preparation of the Government's requirements and specifications; a Contractor's providing advisory assistance to the Government in a procurement in which the Contractor's firm, or one which the Contractor represents, is an actual or potential offeror; a Contractor's participation, as an offeror or representative of an offeror, in a procurement where the Contractor has obtained confidential or proprietary information relating to competing offerors as a result of the Contractor's work on prior contracts; and a Contractor as the orderer of services against this contract.
- (c) Definition. For purposes of this clause, the term "Contractor" means: the contractor; any of the Contractor's parents, affiliates or other entities in which the Contractor or such parents or affiliates have a financial interest; successors in interest to the Contractor or any of its parents or affiliates; proposed consultants or subcontractors at any tier; and employees thereof
- (d) Restrictions. The Contractor agrees:
  - (1) To remain ineligible to participate in any capacity (including participation as a prime contractor, subcontractor, or as the representative of another party) in contracts, subcontracts, or proposals therefore (whether solicited or unsolicited) which directly relate to the Contractor's performance of work under this Contract.
  - (2) Prior to beginning work on a contract, to execute such Confidentiality Agreements, Statements of Non-Disclosure, or other documents which the Contracting Officer may, in his/her sole discretion, require in order to protect the proprietary nature or confidentiality or information provided by the Government or otherwise received by the Contractor in connection with its work under this Contract.
  - (3) As otherwise provided in this Contract, no to accept any compensation or any other form of payment from a broker, potential lessor, or any source other than the Government for services rendered under this Contract, and to employ aggressive strategies to minimize the Government's lease costs where the Contractor would be entitled by common business practice to receive a real estate commission or any form of payment from a broker, potential lessor, or other party, for work performed under this Contract.

- (4) To immediately notify the Contracting Officer or any offer of compensation, other form of payment, or thing of value, made by a broker, potential lessor, or any source other than the Government to the Contractor related to services rendered under this Contract, regardless of whether such offer was made during Contractor's performance of work under a given contract or subsequent to Contractor's completion of work under such contract.
- (5) Prior to the acceptance of a contract request, to immediately notify the Contracting Officer of any potential conflict of interest which would prevent or limit the Contractors ability to perform the work requested.
- (6) To immediately notify the Contracting Officer of any conflict of interest discovered during Contractor's performance of work pursuant to a Government-issued contract; provided that the Contracting Officer shall have the right to impose such restrictions as he/she deems appropriate on Contractor's performance based on the existence of such a conflict or, if the Contracting Officer determines that such restrictions would not adequately address the conflict of interest at issue, to terminate the Contractor's performance of work under the contract at no cost of the Government.
- (7) As otherwise provided in the Contract; that if the Contractor declines to accept a contract request and subsequently participates (either directly or as a representative of another party) in a Government contracting action which was the subject of the contract request, then the fee which the Contractor would have been entitled to receive for such contract work or the fee actually paid by the Government for the contract's performance by another contractor, whichever is greater, shall be applied toward the Contractor's minimum ordering guarantee.
- (8) That in the event that Contractor knowingly withholds the existence of a conflict of interest from the Government, that the Contracting Officer may terminate this Contract at no cost to the Government and any minimum guarantee(s) otherwise applicable to the Contractor will be forfeited; provided, that the foregoing shall be in addition to all other remedies and caused of action which the Government may have against the Contractor, including the suspension and/or debarment of the Contractor.
- (9) To include this Conflict of Interest clause, including this subparagraph, in all of the Contractor's subcontractors at all tiers (appropriately modified to preserve the Government's rights hereunder) which involve the performance of work by subcontractors in support of this Contract.
- (10) That, in addition to the remedies enumerated above, the Government may terminate this Contract for cause in the event of the Contractor's breach of any of the above restrictions.

(End of clause)

## INSURANCE COSTS

The cost of insurance required by Defense FAR Suppl 252.247-7007, Liability and Insurance

clause, shall be considered to be costs which shall be subject to the Revision of Prices clause, Defense FAR Suppl 252.247-7002, and the following conditions. The criteria for the measurement, assignment and allocation of insurance costs shall be determined in accordance with Cost Accounting Standard 416, Accounting for Insurance Costs, 4 CFR 416. The Contractor shall maintain such records as may be necessary to substantiate the amounts of premiums, refunds, dividends, losses, and self- insurance charges, paid or accrued, and the measurement and allocation of insurance costs. Where exposure to risk or loss (or any portion there of is not covered by purchased insurance, Contractor shall follow a program of self insurance which shall be subject to the prior approval of the Contracting Officer. Actual losses shall not become a part of insurance costs. The cost of self- insurance charged to the contract (or the combined cost of self- insurance of purchased insurance) shall not exceed the cost of purchased insurance for comparable coverage. Actual loss experience shall be evaluated regularly (at least annually), and self- insurance charges for subsequent periods shall reflect Contractor's actual loss experience in the same manner as would purchased insurance. Price adjustments based on changes in insurance costs shall be on a prospective basis only.

(End of clause)

## **ASSESSMENT REIMBURSEMENT**

Collective bargaining agreements with the longshoremen's union may require the Contractor to pay various tonnage assessments on the cargo handled under this contract. Provisions elsewhere in this contract provide for reimbursement of these assessments at out-of-pocket costs; based on invoices supported by paid receipts. In order to receive such compensation, the Contractor must provide, within thirty (30) days of award, the following information on each assessment:

- a. Title and purpose of assessment;
- b. Reporting and payment responsibility;
- c. Reporting basis (i.e., vessel, monthly);
- d. Basis of assessment (type of cargo);
- e. Amounts of assessment; and
- f. Authority of assessment (union agreement citation).

In support of the above, the Contractor shall include copies of the portion of the collective bargaining agreement or other document providing for the assessment, the document detailing the amount of the assessment and a sample of the receipt which will be used to support the Contractor's invoices.

Further, the contractor shall notify the Contracting Officer promptly, in writing, of any change in these assessments, including copies of documents authorizing the change.

(End of clause)

## **SPECIAL CERTIFICATIONS**

- a. Contractor Certifications
  - (1) When materials are furnished from the Contractor's stock in accordance with provisions stated elsewhere in the contract, the invoice shall contain a list of such materials with itemized costs and the following statement:

“I certify that charges for materials furnished from previously purchased stocks are not in excess of actual costs.” The invoices and statement will be signed by the Contractor.

- (2) When any out-of-pocket supplies or services are furnished specifically for use under the contract, the invoice shall be supported with paid receipts.
- (3) If the purchase is made and paid for by a parent or subsidiary firm, a letter explaining the relationship between that firm and the firm paying for the out-of-pocket costs will be sent to the Finance and Accounting Division along with the invoice.

b. Contracting Officer Certification.

Both out-of-pocket and out-of-stock invoices shall have Contracting Officer Certification indicating prior approval of the quantity and prices.

(End of clause)

## COMPENSATION

No services shall be paid for by the Government other than those provided for in this contract.

- a. Basic Rate. Unless provided elsewhere in this contract, the Contractor shall be compensated for performing his routine duties under this contract only at the rates specified in the Schedule of rates.
- b. Rate for Other Services. For non-routine services provided for in this contract the Contractor shall be paid at the rate applicable for such services as specified in the appropriate schedule of this contract.
- c. Misshipped or Undocumented Cargo. The Contractor shall not be paid for cargo, both import and export, which is misshipped and undocumented. Examples for which this applies include the following:
  - (1) Cargo loaded upon a vessel or stuffed into a SEAVAN (container) without documentation being provided to the Government will not be payable.
  - (2) Properly documented cargo which is directed to the wrong port of discharge or consignee will not be payable.
- d. Deductions for Mis-shipment of Cargo. The Contractor shall be assessed revenue deductions if the mis-shipment (misdirection/mis-shipment/misconsignment) or non-shipment of booked cargo is caused by the Contractor. This also applies if cargo is loaded upon a vessel or stuffed into a SEAVAN without documentation being provided to the Government. Contractor's liability within the meaning of this provision shall result in collection of or an adjustment (decrease) to the Contractor's revenue in the sum of \$200.00 for each mis-shipment or non-shipment or lack of documentation of a shipment unit (as identified by an individual TCN) caused by the Contractor. This sum shall represent the full demand of the Government upon the contractor for any and all administrative costs occasioned by the Government as a result of the mis-shipment, nonshipment or lack of documentation of cargo.
- e. Mis-shipment (Misdirection) of Cargo. In addition to deduction at paragraph d above, the Contractor shall be held responsible for the mis-shipment (misdirection) of cargo attributable to Contractor fault. The Contractor shall reimburse the Government for all additional cargo handling, ocean- going, rail, etc., and other transportation costs occasioned the Government by such mis-shipment (misdirection).
- f. Overtime Rates. The Contractor shall order out personnel for overtime work only with the prior written approval of the Contracting Officer. When approved by the Contracting Officer



and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates or man- hour rates, at the overtime differential rates set forth in the applicable schedule of Section B. Overtime periods shall be determined in accordance with prevailing collective bargaining agreements applicable to the Contractor and his employees. Costs associated with overtime payments for extended time and/or daily guarantees provided for by the prevailing collective bargaining agreements and/or which the Contractor elects to pay its labor as a condition of employment shall be included in the commodity rates.

g. Tonnage Figures and Invoices.

- (1) The basis upon which compensation shall be computed for all cargo loaded or discharged is a measurement ton of 40 cubic feet, or a weight ton of 2,240 pounds. The maximum tonnage for which compensation is to be computed for any single lift shall be 100 revenue tons.
- (2) The Government shall furnish the Contractor, on a weekly basis, one copy of RIN234100P, Contractor Commodity Vessel/Doc Payment Report, Detail and one copy of RIN2341200P, Contract Commodity Vessel/Dock Payment Report, Summary; or, at the option of the Contracting Officer, the Government will furnish manifests to the Contractor.
- (3) The Contractor shall meet with the Government weekly to insure:
  - (a) That the activities referenced by contract commodity and quantities indicated on the Contract Commodity Vessel/Dock Payment Report were actually performed.
  - (b) That differences discovered by separate and individual examinations performed by the Government and the Contractor to verify the information recorded on the Contract Commodity Vessel/Dock Payment Report are resolved and corrected.
  - (c) That the Contract Commodity Vessel/Dock Payment Report corrections are annotated and initialed by the Government and Contractor.
- (4) Invoices for each ship loaded or discharged, including materials used, shall be submitted by the Contractor not less than five (5) days after his receipt of tonnage figures or manifests. Invoices for railcar, truck and materials used therewith, shall be submitted not later than five (5) days after receipt of tonnage figures.

h. Detention and Minimum Time. Detention and minimum time are payable to the Contractor, in lieu of commodity or extra labor rates specified elsewhere in this contract, at the applicable manhour rates in Schedule III, Section B, subject to the following:

- (1) When a detention occurs prior to or during a commodity operation, the Contractor shall absorb each detention of twenty (20) minutes or less. The Government shall pay the Contractor at detention rates for persons in gangs, including clerks and equipment operators (drivers) for each detention in excess of twenty minutes including the first twenty minutes thereof
- (2) Detentions shall not be authorized for any part of a ship gang that is not required on commodity operations, or when certain classes of labor on commodity operations are required to stand by because of another class of labor performing a commodity operation.
- (3) When a detention occurs prior to or during an extra labor operation, the Government shall pay the Contractor on a detention rate basis for the time of each detention. In the event part of a gang is required to perform an extra labor operation, the balance of the gang standing by shall be paid for at detention rates. In the event certain classes of labor are

required to standby because of another class of labor performing an extra labor operation, such certain classes of labor shall be paid at detention rates.

- (4) Minimum Time. Minimum time shall be payable to the Contractor when work fails to materialize or when work is completed prior to the minimum time and shall not be payable (i) for checkers working in conjunction with longshoremen until completion of the longshoremen's commodity activity; and (ii) for any part of a gang not required on a commodity activity.
  - (5) Payment for detention time or minimum time will be computed to the nearest 5 minute multiple.
  - (6) If any detention or minimum time is due to the fault of the Contractor or the failure of the Contractor to order out sufficient personnel to comply with the instructions of the Contracting Officer, the entire time resulting there from shall be at the expense of the Contractor. In the event the Contractor hires more men than are required, any detention time or minimum guaranteed time there from shall be at the expense of the Contractor.
  - (7) When ship operations require discharging of cargo under Schedules IA2 and IA4 prior to the loading of cargo under the Schedules IA1 and IA3 and carpenters are required to standby due to another class of labor performing a discharge operation, the Government shall pay the Contractor at the detention rate for carpenters for such detention. At the commencement of the loading operation, the provision of (2) shall prevail.
  - (8) The Contractor will be reimbursed for minimum guarantee payments during overtime periods in accordance with applicable collective bargaining agreements.
- i. Additional Payments.
- (1) When the Contractor is required by collective bargaining agreements to make additional payments to employees, such as for cargo penalties, premium payments, transportation, automobile mileage, penalty or penalty overtime differential, explosive penalty, and third shift differential and other allowances, the Contractor shall be compensated therefor, at out-of-pocket costs.
  - (2) When the Contractor is directed by the Contracting Officer to furnish stevedore-related equipment, materials, and/or services for which payment is not otherwise specified in this contract, the Contractor will be compensated therefor at out-of-pocket costs unless such direction is necessitated due to Contractor fault or negligence
- j. Hardship.
- (1) The Contractor shall bring to the attention of the Contracting Officer, in advance of work if possible, but no later than time of ship sailing, any unusual ship loading and/or discharging operations, the performance of which shall work a hardship upon the Contractor. Hardship claims shall be submitted to the Contracting Officer within ten (10) working days of the vessel sailing date.
  - (2) If the Contracting Officer determines that due to unusual ship, dock or cargo conditions, the loading or unloading of any particular cargo at the basic commodity rates shall work a hardship upon the Contractor, he may so certify in writing and authorize compensation to the Contractor for loading or unloading such cargo at the applicable man- hour rates set forth in Section B.
- k. Mechanization (Containerization) Payments.
- (1) Payments. The rates set forth in the schedules for this contract do not contain any charges or allowances for containerization or mechanization assessments. Payments to the Contractor by the Government for such charges or assessments shall (i) be in addition to

any other payments provided for in the contract; (ii) be made upon receipt of the Contractor's invoice; and (iii) not be in excess of, or more frequent than, the periodic charges or assessments to the Contractor attributable exclusively to the performance of this contract.

- (2) Sharing of Benefits. The Contractor agrees to institute labor saving procedures or devices as authorized in pertinent labor/management agreements and make a report of same related to cost savings. In those instances where such device or procedure results in a reduction in the cost of performance of this contract, the parties shall negotiate the amount of such cost reduction and such agreements shall be set forth in a written modification to the contract which shall further state the effective date of contract operations when said cost reduction(s) became applicable. The parties agree that the amount of cost reductions so agreed upon shall be shared between them in the following manner:

(a) The total amount of said cargo reductions shall be computed for each pay cycle month on a non-cumulative basis.

(b) The distribution of the computed monthly cost reduction dollars shall be on the basis of 60% to the Government and 40% to the Contractor. The Government's share of this distribution shall be paid to the Government as follows:

1.Amount up to, but not exceeding, the amount invoiced by the Contractor for the same month pursuant to subparagraph k(1) of this clause shall be credited as an offset to such Contractor invoices.

2.Any balance of the Government's share of the monthly cost reduction dollars remaining and which have not been credited against contractor invoices in accordance with subparagraph k (2)(b) 1 shall be paid to the Government as credit and offset against other sums due to the Contractor under his Contract, or in such manner as agreed between by the Contracting Officer and the Contractor.

(End of Clause)

## **PERIOD OF PERFORMANCE**

This contract covers a performance period of 36 months commencing 01 January 2003 through 31 December 2005; provided, however that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract until completed unless otherwise directed by the Contracting Officer.

(End of Clause)

## **OPTION OF EXTENDED PERFORMANCE**

The Government has the option to extend the term of performance by a period not to exceed 6 months as set forth in the clause FAR 52.217-8, Option to Extend Services, of this contract. Any extension to the contract will be at the rates in effect on the effective date of the extension.

## **PLACE OF PERFORMANCE**

The place of performance is at the Military Traffic Management Command (MTMC) 841st U.S. Army Transportation Battalion located on the Naval Weapons Station South, North Charleston,

South Carolina. The operational area of responsibility shall cover the Charleston Naval Weapons Station, the Naval Weapons Station South, and all South Carolina State Port Authority facilities within the Greater Charleston area, and facilities of the Georgia Port Authority, Savannah State Docks (Garden City Terminal and Ocean Terminals).

## **PLACEMENT OF ORDERS**

Delivery orders will be issued by HQ, MTMC, ATTN: MTAQ-TS, 200 Stovall St., Room 12S45, Alexandria, VA 22332-5000 IAW FAR 52.216 - 18, Ordering clause.

## **ASSIGNMENT OF CONTRACT FOR ADMINISTRATION**

The Contract Administration Office, 841st U.S. Army Transportation Battalion, ATTN: Denis Wengland, 1050 Remount Rd., Bldg 3304, North Charleston, SC, 29406-3500 will perform contract administration for the contract.

The ACO does not have the authority to change any of the terms and conditions of this contract. Changes within the scope of work will be made only by the Procuring Contracting Officer by properly signed written modification of the contract.

The Contract Administration office may be reached on telephone number (843) 743-0408/0417.

## **POINT OF CONTACT**

**The HQ MTMC point of contact established to assist the Contractor in contractual matters arising under this contract is Quentin Blanchard in the Transportation and Terminal Services Branch, Acquisition Division, PH: (703) 428-3476 or via email [blanchardq@mtmc.army.mil](mailto:blanchardq@mtmc.army.mil).**

## **Part III – SOLICITATION PROVISIONS**

### **52.212-1 -- Instructions to Offerors—Commercial Items (Oct 2000)**

*(a) North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code 488320 and or Standard Industrial Code 4491 small business size standard for this acquisition appears in block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard or a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is \$21.5 million.

*(b) Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers must be submitted on the SF 1449 in the solicitation. As a minimum, offers must provide:

- (1) In response to this solicitation, each Offeror must submit their proposal in two (2) separately bound volumes in accordance with the format outlined below.
- (2) The hard copy proposals must be submitted on 8-1/2 by 11- inch paper, with one- inch margins, using Times New Roman font with no less than 10-point font size. Proposal

pages exceeding the volume page limitations, paper size, margins, and font limits as stated in this solicitation will not be considered.

- (3) The Offeror must also provide an electronic version of its proposal on Microsoft Windows-compatible 3.5-inch 1.4 MB diskette(s) or 650 MB CD-Rom (CD-R) in Microsoft Windows Word 97 and Excel 97 format. Any pricing information will be on separate disk(s) from the technical information. In the case of a conflict between the electronic and the hard copy, the hard copy will be considered the correct version.

### **Volume I – Contracting and Pricing Volume (original and one copy)**

**This volume shall contain the entire completed Solicitation, Past Performance Information, the completed Schedule of Rates and supporting pricing information.**

Submission of the following will constitute an offer, which the Government may accept to form a contract. Accordingly, to be determined ACCEPTABLE, offers must include the following:

Completed Proposal/Offer Submitted in Response to RFP - All required documentation requested must be completed and submitted within the prescribed deadline to include:

- 1) Completed and Signed SF 1449 and Acknowledgement of Any Amendment(s) (SF30), if applicable.
- 2) Completed Section B, Schedule of Rates (unit prices and total line item amounts for all line items, in accordance with the pricing instructions provided in Part VI, Attachments) (Amounts are to be in a two decimal format; e.g. \$3.56, \$72.00)
- 3) Completed Representations and Certifications, FAR 52.212-3 and DFARs 252.212-7000.
- 4) “Remit to” Address (see Block 17b of SF 1449), if different from the mailing address.
- 5) Supporting Pricing Documentation as stated in Part VI, Attachments, Contract Pricing Proposal Instructions to Offeror (this is to be included in Volume I).
- 6) Past Performance Information. The Offeror must submit past performance information as it relates to the requirements of the solicitation. Offerors must submit the information listed below as part of their proposal for both the offeror and proposed major subcontractors, if any.
  - (a) A list of five (5) contracts completed within the past three years, which clearly demonstrate the offeror’s performance relevant to the requirements and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the Federal Government, state and local government agencies and commercial customers.
  - (b) Offerors that are newly formed entities without prior contracts or new to the solicitation requirements, with no relevant past performance history, must list five (5) references, for all key personnel whose experience the offeror proposes will demonstrate their ability to perform the solicitation requirements.

(c) Include the following information for each contract:

- Name and address of contracting activity, state or local government agency, or commercial customer.
- Point of contact (POC). - Contract number.
- Contract type (fixed price/cost reimbursement, competitive/non competitive, negotiated/sealed bid)
- Contract value.
- A description of the services/work required under the contract, including performance location (s) and performance period.
- Name, telephone number, and facsimile number of the Contracting Officer or other individual responsible for awarding the contract.
- Name, telephone number, and facsimile number of the Administrative Contracting - Officer or other individual responsible for administering the contract.
- Name, telephone number, and facsimile number of program manager, operations officer or other individual responsible for technical oversight of contract performance.

(d) The offeror should provide information on problems encountered on the contracts and subcontracts identified above and corrective actions taken to resolve those problems. Offerors should not provide general information on their performance. General performance information will be obtained from the references.

(e) The offeror may describe any widely recognized quality awards or certifications that the offeror has earned. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications. Identify the segment of the company (one division or the entire company) that received the award or certification and when the award or certification was bestowed. If the award or certification is more than three years old, present evidence that the qualifications still apply.

Note: The Past Performance Evaluation Report will provide an overall rating on timeliness, problem responsiveness, quality of purchased products or services, total cost, technical support, deliveries/ quantities, and attitude of supplier personnel. To assist in the development of this report, all Offerors must submit adequate information as stated in Paragraph 6 above. The Government may also utilize any other source available in order to collect performance data. The Government reserves the right to ask for additional information regarding an Offeror's past performance, if required. Such requests for additional information will not constitute discussions as defined in FAR 15.306(d). The Government further reserves the right to obtain information regarding an Offeror's past performance from other sources.

**Price:**

To support the prices proposed, price proposals shall include the following information: Sufficient information for each service offered to enable the Contracting Officer to determine that the prices are fair and reasonable. Pricing must be furnished in sufficient detail to enable the Contracting Officer to perform a price analysis in accordance with FAR 15.404.

(a) This data should show how the Offeror arrived at the proposed price (e.g. hourly rate + overhead + G&A + profit = the proposed rate for each labor category). This supplemental data must present a complete picture of the development of the Offeror's prices (See attachment entitled "Contract Pricing Proposal *Instructions to Offeror* for complete details). The data may include all direct costs, indirect costs, profit, and any other factor that contributes to the proposed total price. The breakouts should clearly indicate the dollar amounts and percentages for each factor. Upon award of the contract, this data will form the basis for any price adjustments pursuant to the Revision of Prices clause and, as such, must provide the means of determining the application of any requested adjustments and calculation the revised unit price. A price certification is not required.

(b) If the proposed labor categories are covered under the Services Contract Act, the price proposal should include a matrix or cross-reference between the Offeror's proposed labor categories and the labor categories included in the incorporated DOL Wage Determination(s).

## **Volume II - Technical Volume (original and five copies)**

**This volume shall contain the Offeror's Technical Capability, which demonstrates the Offerors Understanding the Government's Requirement.**

Technical Capability. The technical capability is limited to a maximum of 20 pages (excluding Safety, Security, Cargo Loss and Damage, and Quality Control Plans). **No price information shall be included in the technical volume.** The Offeror must submit technical capability that describes its ability to manage, supervise and perform required stevedoring and related terminal services in accordance with the contract requirements to include:

(a) Understanding of the Work. A description of the offeror's overall knowledge and understanding of required stevedoring and related terminal services for the handling of both DoD and non-DoD cargo, to include:

- Vessel loading and discharge including but not limited to lashing and securing of cargo; cargo stow planning; utilization of all types of cargo lifting gear and materials handling equipment (MBE); procedures for handling hazardous cargo including explosives; and, knowledge of all Federal, State, and terminal or port requirements in the handling of types of cargo as required by the contract.
- Proposed number(s), type(s) and availability of contractor furnished equipment to perform all contract required stevedoring operations, including but not limited to, all equipment identified in the Performance Work Statement paragraph, 4.1. Contractor Furnished Supplies and 4.2., Contractor Furnished Gear and Equipment.
- Reliability of proposed equipment expressed by its age, condition, and how it will be maintained and serviced.

(b) Management of Operations. Proposed plan for managing and supervising stevedoring and related terminal services to accomplish contract requirements. The plan must include:

- A detailed description of the managerial control and supervision of organization; operational control; *staffing* to satisfy requirement; methods to control costs; lines of authority coordination; and plan for interfacing with the Government required for the performance of the contract requirements;

- Proposed key personnel qualifications, experience and expertise to include resumes for proposed Terminal Manager, Stevedore Superintendents, and HAZMAT personnel; identify their qualifications including managerial experience, training, and required certifications;

**Staffing Plan.** To include a breakdown of the contractor's gang structure (by labor categories) and estimated per hour productivity levels for handling all cargo commodities.

**DO NOT INCLUDE PRICING IN THIS BREAKDOWN.**

(c) Quality Control. Submit your proposed procedures/plans to provide quality control oversight, measurements, and reporting processes to ensure compliance with all contract requirements to include the following:

- Quality Control Plan. Proposed Quality Control Plan with a quality performance inspection checklist that includes all elements of the Performance Requirements Summary (PRS).

- Safety and Security Programs. Proposed comprehensive and effective Safety and Security programs which comply with all contract safety and security requirements.

- Cargo Loss and Damage Prevention Program. Proposed Cargo Loss and Damage Prevention Program including the procedures for minimizing damage; checking cargo upon receipt and shipment; maintaining records for cargo on-hand; and identifying damaged cargo in need of cooperating to prevent further loss and/or damage.

(c) Period for acceptance of offers. The Offeror agrees to hold the prices in its offer firm for 120 calendar days from the date specified for receipt of offers, unless another time period is specified in an amendment to the solicitation.

(d) Late offers. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(e) Contract award. *The Government intends to evaluate offers and award a contract without discussions with Offerors.* Therefore, the Offeror's initial offer should contain the Offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.



(f) Pre-Proposal Conference. Prospective Offerors are advised that the Government will conduct a Pre-Proposal Conference July 30, 2002, .

(g) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e- mail to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

(End of provision)

## **52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA ALTERNATE IV (OCT 1997)**

(a) Submission of cost or pricing data is not required.

(b) Provide information described below:

Commercial items. The Offeror must submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include

- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;
- (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
- (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item. Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(c) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent

records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(End of provision)

## **Part IV- EVALUATION OF OFFERS**

### **52.212-2 EVALUATION—COMMERCIAL ITEMS (JAN 1999)**

- (a) The Government will award a single contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. To facilitate evaluation, all proposals must follow the instructions provided in Instructions to Offerors.
- (b) **OFFEROR ACCEPTABILITY.** The Government will use the Acceptability Determination Checklist, Part VI, Attachments, to evaluate offers for acceptability on a pass or fail basis. Only offers that are determined to be acceptable may be further evaluated. The Offer will be considered acceptable if, and only if, the Offeror submits the information as required in Part III, Instructions to Offerors and the offer manifests the Offeror's unconditional assent to the terms and conditions of the solicitation, which include the Performance Work Statement.

Any Offer that takes exception to any term or condition of the solicitation, or that otherwise fails to manifest the Offeror's unconditional assent to a term or condition or fails to submit the information as required in the Instructions to Offerors, may be considered **unacceptable** and the Offeror ineligible for award,

- (c) **EVALUATION FACTORS.** After acceptability determination is made offers will be evaluated on the following factors: (1) technical capability, (2) past performance, and (3) price. The non-price factors of Technical Capability and Past Performance are relatively equal to each other. When combined the non-price factors are approximately equal to price.

**FACTOR (1) TECHNICAL CAPABILITY.** The Government will evaluate the Offeror's technical capability to determine the degree to which the information provided by the offeror in its proposal demonstrates the offeror's ability to manage, supervise, and perform stevedoring and related terminal services in accordance with the contract requirements and the subfactors listed below. All subfactors are of equal importance.

***Subfactor A: Understanding of the Work.*** Demonstrated knowledge and understanding of required stevedoring and related terminal services, including management and supervision of, vessel loading and discharge to include lashing and securing of cargo; cargo stow planning; utilization of all types of cargo lifting gear and materials handling equipment; procedures for handling hazardous cargo including explosives; and knowledge of all Federal, State, and terminal or port

requirements in the handling of types of cargo as required by the contract. Proposed numbers, types, condition and age of equipment will also be evaluated.

***Subfactor B: Management of Operations.*** Demonstrated managerial and supervisory ability to provide required stevedoring and related terminal services in accordance with the contract PWS including management control and supervision of the organization; operational control; cost control methods; lines of authority for coordination; interface with the Government for performance of the requirements; staffing to perform requirement, including key personnel, HAZMAT certified personnel, gang structure; and, productivity levels for handling all cargo commodities.

***Subfactor C: Quality Control.*** Demonstrated ability to provide quality control oversight, measurements, and reporting processes to ensure compliance with of all contract requirements including a proposed or established Quality Control Plan with a quality performance inspection checklist that includes all elements in the Performance Requirements Summary; comprehensive and effective Safety and Security programs which comply with all contract safety and security requirements; and a Cargo Loss and Damage Prevention Program that includes procedures for minimizing damage; checking cargo upon receipt and shipment; maintaining records and reporting of cargo on-hand; and identifying damaged cargo in need of cooperating to prevent further loss and or damage.

(2) **PAST PERFORMANCE.** Past performance is a measure of the degree to which an Offeror satisfied its customers in the past and complied with Federal, state, and local laws and regulations.

a. The Government will evaluate each Offeror's past performance, and that of any major sub contractors, as it relates to the probability of successful accomplishment of the services required under this solicitation. The Government will consider the currency of past performance information; relevancy of the information; the source of information; the context of the data; and, general trends in the contractor's performance. This consideration will focus on those areas of performance that are most relevant to the solicitation requirements, such as compliance with contractual requirements, technical competence, knowledge and understanding of DoD transportation policies and customer satisfaction. In the absence of past performance (new company) the Government will evaluate the references of the Key Personnel the offeror has submitted in its proposal.

b. If an Offeror or proposed subcontractor does not have past performance history or key personnel experience relevant to the solicitation, the Offeror will not be rated favorably or unfavorably.

c. The Government may contact the references provided in the offer, former customers, Government agencies, and other private and public sources of information to inquire about the offeror's past performance, including, but not limited to: its reputation for conforming to terms and conditions; for accurately estimating and controlling cost; for adherence to contract schedules (including the administrative aspect of performance); for reasonable and cooperative behavior

and commitment to customer satisfaction. However, the burden of providing thorough and complete past performance information rests with the offerors.

### (3) **PRICE**

a. The offer will be evaluated for Price reasonableness in accordance with FAR 15.305(a)(1). Price will be evaluated for reasonableness based on the total proposed price. The determination that the total price is reasonable will be based on information submitted with the offeror's proposal (see Instructions to Offerors, Volume I – Contracting and Pricing Volume), the comparison of other competitive offers, the Independent Government Cost Estimate (IGCE) or on any other reasonable basis.

b. Offerors will be ranked from lowest to highest price. If only one offer is received, the determination will be based on a comparison to the IGCE or any other reasonable basis.

(d) Source Selection Decision. The contract will be awarded to the Offeror whose offer represents the best overall value to the Government, considering a combination of technical capability, past performance, and price. The Contracting Officer will rank offerors based on the overall evaluation. The Government reserves the right to award to other than the lowest priced offeror. The Government also reserves the right to award to other than the offeror(s) receiving a low performance risk assessment for past performance and/or a low risk assessment for technical capability, where doing so would represent the best overall value to the Government.

(e) Notice of Award. A written notice of award or acceptance of an offer, mailed or otherwise, furnished to the successful Offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government will accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

## **Part V – Offeror Representations and Certifications**

### **52.212-3 -- Offeror Representations and Certifications -- Commercial Items.**

As prescribed in 12.301(b)(2), insert the following provision:

#### **Offeror Representations and Certifications -- Commercial Items (May 2002)**

(a) *Definitions*. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process of penalties.

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern --

(1) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer identification number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C.

7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.]

(3) *Taxpayer Identification Number (TIN).*

\_\_\_ TIN: \_\_\_\_\_.

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

\_\_\_ Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government;

(4) *Type of organization.*

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

\_\_\_ Corporate entity (tax-exempt);

\_\_\_ Government entity (Federal, State, or local);

\_\_\_ Foreign government;

\_\_\_ International organization per 26 CFR 1.6049-4;

\_\_\_ Other \_\_\_\_\_.

(5) *Common parent.*

\_\_\_ Offeror is not owned or controlled by a common parent:

\_\_\_ Name and TIN of common parent:

    Name \_\_\_\_\_

    TIN \_\_\_\_\_

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it \_\_\_ is, \_\_\_ is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it \_\_\_ is, \_\_\_ is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it \_\_\_ is, \_\_\_ is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it \_\_\_ is, \_\_\_ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it \_\_\_ is, \_\_\_ is not a women-owned small business concern.

**Note:** Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]. The offeror represents that it \_\_\_ is, a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(8) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it \_\_\_ is, \_\_\_ is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

*(Check one of the following):*

<u>Number of Employees</u>	<u>Average Annual Gross Revenues</u>
50 or fewer	\$1 million or less
51-100	\$1,000,001-\$2 million
101-250	\$2,000,001-\$3.5 million
251-500	\$3,500,001-\$5 million
501-750	\$5,000,001-\$10 million
751-1,000	\$10,000,001-\$17 million

Over 1,000

Over \$17 million

(9) *[Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]*

(i) *General.* The offeror represents that either-

(A) It \_\_\_ is, \_\_\_ is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It \_\_\_ has, \_\_\_ has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. *[The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.]*

(10) *HUBZone small business concern.* *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, as part of its offer, that--

(i) It \_\_\_ is, \_\_\_ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It \_\_\_ is, \_\_\_ not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating on the joint venture. *[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating



in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) *Representations required to implement provisions of Executive Order 11246 --*

(1) Previous contracts and compliance. The offeror represents that --

- (i) It \_\_\_ has, \_\_\_ has not, participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and
- (ii) It \_\_\_ has, \_\_\_ has not, filed all required compliance reports.

(2) *Affirmative Action Compliance*. The offeror represents that --

- (i) It \_\_\_ has developed and has on file, \_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or
- (ii) It \_\_\_ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352)*.

(Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act - Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled "Buy American Act -Supplies") and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)

(1) *Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act Certificate*. (Applies only if the clause at FAR 52.225-3, Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act, is included in this solicitation.)

- (i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in

the clause of this solicitation entitled "Buy American Act -- North American Free Trade Agreement-- Israeli Trade Act" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act-North American Free Trade Agreement-Israeli Trade Act":  
NAFTA Country or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
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*[List as necessary]*

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) or this provision) as defined in the clause of this solicitation entitled "Buy American Act-North American Free Trade Agreement-Israeli Trade Act". The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
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*[List as necessary]*

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act-North American Free Trade Agreements-Israeli Trade Act Certificate, Alternate I (May 2002)*. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act-North American Free Trade Agreement-Israeli Trade Act":  
Canadian End Products

Line Item No.: \_\_\_\_\_

*[List as necessary]*

(3) *Buy American Act-North American Free Trade Agreements-Israeli Trade Act Certificate, Alternate II (May 2002)*. If Alternate II to the clause at FAR 52.225-3 is

included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act":  
Canadian or Israeli End Products

Line Item No.:	Country of Origin:

*[List as necessary]*

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.:	Country of Origin:

*[List as necessary]*

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* (Applies only if the contract value is expected to exceed the simplified acquisition

threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--

(1) \_\_\_ Are, \_\_\_ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) \_\_\_ Have, \_\_\_ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) \_\_\_ Are, \_\_\_ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]*

(1) Listed End Product

Listed End Product	Listed Countries of Origin:

## **252.212-7000 Offeror Representations and Certifications--Commercial Items.**

As prescribed in 212.301(f)(ii), use the following provision:

### **OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS**

**(NOV 1995)**

(a) *Definitions.* As used in this clause-

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification*. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it-

- (1) Does not comply with the Secondary Arab Boycott of Israel; and
- (2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) *Representation of Extent of Transportation by Sea*. (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

- (1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation. The Offeror represents that it-

\_\_\_\_\_ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_\_ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

- (3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)